ADDITIONAL VIEWS

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The Judiciary Committee of the U.S. House of Representatives of the 105th Congress recently completed an impeachment inquiry of President William Jefferson Clinton. The purpose of the inquiry was to defend the Constitution, search for the truth, and follow the rule of law.

The wisdom of the Founding Fathers is truly amazing. They understood that the nature of the human heart struggles between good and evil. So, the Founders created a system for accountability, comprised of checks and balances. If corruption invaded the political system, the Constitution provides a means to address it. The Founders felt impeachment was so important, language regarding impeachment appears in six different places in the Constitution.[1] The power to impeach rests in the House of Representatives, while the power to remove the President resides in the Senate.

In 1974, the House engaged in a similar impeachment investigation of President Richard M. Nixon. At that time, the House investigated the facts as reported by the Judiciary Committee in order to determine whether the allegations presented reached the level of impeachable offenses. In the present case, the purpose of the inquiry by the Judiciary Committee and the House of

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[1] The clauses discussing congressional power are: "The House of Representatives . . . shall have the sole Power of Impeachment." U.S. CONST. art. I, § 2; "The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present." U.S. CONST. art. I, § 3. "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." U.S. CONST. art II, § 4.

Representatives was to determine whether the evidence contained in the Referral by the Office of the Independent Counsel ("OIC") gives rise to impeachment.

In order to place the allegations against President Clinton in the proper context, I will first briefly examine the historical underpinnings of the impeachment clause in terms of our national heritage.[2] I will then discuss the nature of the Paula Corbin Jones sexual harassment lawsuit, which gave rise to the investigation of the President. Further, I will review the evidence and allegations presented to the Judiciary Committee by the OIC, as well as the President's defense as advanced by scholars, historians and legal practitioners. I conclude by explaining why I believe the evidence presented suggests that the President committed impeachable offenses. Finally, I will address censure and why I believe it is extra-constitutional.

I. Historical Analysis of "Treason, Bribery and other high Crimes and Misdemeanors"

At the Constitutional Convention of 1787 the Framers arranged three branches of government with an elaborate system of checks and balances. An integral part of the power over the executive branch is found in Congress' impeachment powers. [3] As stated in a report prepared by the House Judiciary Committee staff in 1974 regarding impeachment, the evidence from the Constitutional Convention "shows that the framers intended impeachment to be a constitutional

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[2] On November 9, 1998, the Constitution Subcommittee of the House Judiciary Committee conducted hearings on the background and history of impeachment wherein we were benefitted by the testimony of numerous scholars and historians. I will refer to the testimony of such individuals. As numerous scholars advised the , the Framers of the Constitution purposely used the phrase "Treason, Bribery and other high Crimes and Misdemeanors," as it is rooted in approximately 400 years of English common law.

[3] *See supra* note 1.

safeguard of the public trust, the powers of government conferred upon the President and other civil officers, and the division of powers among the legislative, judicial and executive departments."[4] Congress itself has the power of impeachment, a process of presenting and prosecuting charges against the President, Vice President and other civil officers. Under the Constitution, the House does not have the power to punish. In trying cases of impeachment, it is the Senate that acts as the high court. In 1868, the Senate ceased in order to call itself "a high court of impeachment."

In practice, whenever the House of Representatives decides to bring the President of the United States before the bar of the Senate, it adopts, by resolution, Articles of Impeachment approved by the House Judiciary Committee, charging the President with certain high crimes and misdemeanors and enumerating in sufficient detail as to place him on notice of his particular offenses. If the resolution passes the House by simple majority vote, thereupon it chooses leaders to direct the prosecution before the Senate. The case is then conducted in the form of a trial, under the Senate's own rules of due process, with the Chief Justice of the Supreme Court presiding. The prosecution states its case; witnesses for and against the accused can be heard; and attorneys on both sides make their arguments. When the case is fully presented the Senators vote, and if two-thirds of the members present concur in holding the accused guilty, he stands convicted and removed from office; however, if there is a vote of less than two-thirds of the Members present, he is acquitted.

The penalty which the Senate can impose upon any person convicted in a case of

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[4] STAFF OF THE HOUSE JUDICIARY COMMITTEE, 93RD CONG., REPORT BY THE STAFF OF THE IMPEACHMENT INQUIRY ON THE CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT 709 (Comm. Print 1974)[hereinafter STAFF REPORT]

impeachment is strictly limited to removal of the offender from office and the imposition of a disqualification to hold and enjoy any future office of honor, trust, or profit under the United States. Any person convicted, however, is still liable, after his removal from office, to indictment, trial, judgment, and punishment for his offenses according to law.

The jurisdiction of the Senate as a court of impeachment extends only over the President, Vice President, and the civil officers of the United States for the offenses of treason, bribery, or other high crimes and misdemeanors. What conduct constitutes an impeachable offense is determined by the House. At the Constitutional Convention, originally George Mason favored including the word "maladministration" but he deemed the phrase too ambiguous, and capable of bestowing excessive power in the Senate.[5] As a result, the phrase was replaced with "High crimes and misdemeanors" in order to better define the standard.[6]

Scholars and legal historians differ on exactly what the standard is intended to include. The Committee heard testimony from several scholars who contend that the phrase is narrow and intended to cover conduct relating to abuse of official power or public acts affecting the state,[7]

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[5] *The Background and History of Impeachment: Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee*, 105th Cong., 2nd Sess. (1998) (statement of Hon. Griffin E. Bell).

[6] *Id*. It is important to note that the phrase is not intended to include only criminal offenses, rather it stems from the word "maladministration" proposed by George Mason. *See* STAFF REPORT 12.

[7] *See The Background and History of Impeachment: Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee*, 105th Cong., 2nd Sess. (1998) (statements of Susan Low Bloch, Professor of Law, Georgetown University, and Cass R. Sunstein, Professor of Law, University of Chicago Law School). Many also contend that "private" actions of the President do not give rise to impeachable behavior. *See e.g., The Background and History of Impeachment: Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee*, 105th Cong., 2nd Sess. (1998) (statement of Arthur Schlesinger, Jr., Professor of

but others argued that the phrase is applicable to objective misconduct relating to fitness in office.[8] One of the witnesses before the Subcommittee on the Constitution stated:

> To be sure, serious crimes committed in the actual performance of official government functions are likely to constitute impeachable offenses in all cases. But the scope of the House's impeachment authority is not confined to such crimes, or even to crimes at all. . . . [T]he crimes of perjury and obstruction of justice, like treason and bribery, are quintessentially offenses against our system of government, visit injury immediately on society itself, whether or not committed in connection with the exercise of official government powers. Indeed, in a society governed by the rule of law, perjury and obstruction of justice cannot be tolerated precisely because these crimes subvert the very judicial processes on which the rule of law so vitally depends.[9]

As noted in the Staff Report of 1974, "impeachment is a constitutional remedy addressed to serious offenses against the system of government . . . they are constitutional wrongs that subvert the structure of government, or undermine the integrity of office and even the Constitution itself, and thus are 'high' offenses . . . ."[10] The Report also stated that in impeachment proceedings in English practice and in this country, "[T]he emphasis has been on the significant effects of the conduct-undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of power, abuse of the governmental process, [and] adverse

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History, City University of New York).

[8] *The Background and History of Impeachment: Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee*, 105th Cong., 2nd Sess. (1998) (statement of John O. McGinnis, Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University).

[9] *The Background and History of Impeachment: Hearings Before the Subcommittee on the Constitution of the House Judiciary Committee*, 105th Cong., 2nd Sess. (1998) (statement of Charles J. Cooper, Esq.).

[10] STAFF REPORT 26.

impact on the system of government."[11]

I concur with the premise that while the crimes alleged against the President may not directly involve the exercise of executive powers, excepting the issue of possible misuse of executive privileges, the alleged crimes, plainly, do involve the violation of the president's executive duties.[12]

Relying on the testimony and advice of the legal scholars, historians and judges that appeared before the Subcommittee on the Constitution, I will not attempt to define the impeachment standard. It is best stated by Justice Joseph Story in "*Commentaries on the Constitution*" (1833), the impeachment power applies to "political offenses, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office. These are so various in their character, and so indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law."[13]

We received testimony regarding impeachment in both English and American history. It is understood that personal misconduct, violations of trust, and other charges of a more private nature can be impeachable offenses.[14] Perjury and obstruction of justice drive a stake in the rule

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[11] *Id.*

[12] The Judiciary Committee voted to amend Article IV and deleted the abuse of power language regarding misuse of the executive privilege.

[13] *See* STAFF REPORT 16-17.

[14] In 1986 the House of Representatives voted to impeach the Honorable Harry E. Claiborne. On August 10, 1984, while serving as a judge of the United States District Court for the District of Nevada, Judge Claiborne was found guilty by a jury of making a false and fraudulent income tax return for the calendar years of 1979 and 1980 in violation of 26 U.S.C. §

of law. Now the question is whether perjury to conceal private conduct and other actions to thwart and impede justice in a civil rights case in federal court, as well as perjury before a federal grand jury, rise to the level of impeachable offenses.

II. The *Jones v. Clinton* Civil Lawsuit

In May 1994, Paula Corbin Jones filed a sexual harassment lawsuit[15] against William Jefferson Clinton in the United States District Court for the Eastern District of Arkansas.[16] Ms.

7206(1). The House of Representatives adopted four articles of impeachment charging Judge Claiborne with willfully and knowingly filing false income tax returns, under penalty of perjury, for the years 1979 and 1980. One of the articles of impeachment charged that Judge Claiborne, by willfully and knowingly filing false income tax returns while serving as a Federal Judge, with betraying the trust of the people of the United States and reducing confidence in the integrity and impartiality of the Federal judiciary. Representative Hamilton Fish, ranking member of the Judiciary Committee and one of the House managers in the Senate trial stated, "Judge Claiborne's actions raise fundamental questions about public confidence in, and the public's perception of, the Federal court system. They serve to undermine the confidence of the American people in our judicial system." 132 Cong. Rec. H4713 (daily ed. July 22, 1986).

[15] Title VII of the Civil Rights Act of 1964 does not explicitly refer to "sexual harassment" but makes it unlawful for an employer with fifteen or more employees to discriminate against applicants for employment or employees "because . . . of sex." 42 U.S.C. § 2000e-2(a)(1). Sexual harassment laws have largely developed through judicial opinions, as well as opinions from the Equal Employment Opportunity Commission interpreting Title VII's sex discrimination prohibition. *See* 42 U.S.C. 2000e et. seq. *See also Oncale v. Sundowner Offshore Services, Inc.*, 118 S.Ct. 998 (1998)(holding that same sex harassment is actionable under Title VII); *Faragher v. City of Boca Raton*, 118 S.Ct. 2275 (1998)(holding employer vicariously liable for harassment by supervisor); *Burlington Industries v. Ellerth*, 118 S.Ct. 2257 (1998)(same). The Equal Protection Clause of the Fourteenth Amendment also involves the freedom to be free from gender discrimination unless it is substantially related to an important government objective. *See Beardsley v. Webb*, 30 F.3d 524, 529 (4th Cir. 1994). Intentional sexual harassment against employers acting under the color of state law is actionable under the Fourteenth Amendment and § 1983. *Id.*

[16] REFERRAL FROM INDEPENDENT COUNSEL KENNETH W. STARR, 105TH CONG., 2D SESS., H.R. DOC. NO. 105-310, at 1 (1998) (hereinafter "OIC REFERRAL").

Jones alleged that the sexual harassment incident took place in a hotel room[17] in Little Rock, Arkansas, while Mr. Clinton was the Governor of Arkansas.[18] The President denied the allegations and argued that Ms. Jones did not have the right to proceed against him because he is a sitting President.[19] The Supreme Court unanimously rejected such an argument stating: "Like every other citizen who properly invokes [the] jurisdiction [of the District Court], [Ms. Jones] has a right to an orderly disposition of her claims."[20] Thus, the Supreme Court determined that Ms. Jones was entitled to proceed with her claim as an ordinary litigant, entitled to discovery from the defendant, President Clinton. The Supreme Court therefore reaffirmed the proposition that no person is above the law.

As is common in sexual harassment litigation, a defendant's past behavior can be relevant and material evidence to establish a pattern of misconduct to support the present allegations and the defendant's propensities. In late 1997, the parties disputed whether the President would be

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[17] The allegations in the *Jones v. Clinton* case are reminiscent of the facts in the Lewinsky matter. In *Jones*, the plaintiff alleged that "as she left the room . . . the Governor 'detained' her momentarily, 'looked sternly' at her, and said, 'You are smart. Let's keep this between ourselves.'" *Jones v. Clinton*, 990 F. Supp. 657, 664 (1998).

[18] OIC REFERRAL at 2. Specifically, Ms. Jones alleged that on the night in question in 1991, Governor Clinton exposed his genitals and asked her to perform oral sex on him. *Id.* at 1 n.3. Ms. Jones was an employee of the Arkansas Industrial Development Corporation at the time of the alleged incident. *Id.*

[19] *Id.* at 2.

[20] *Jones v. Clinton*, 117 S.Ct. 1636, 1652 (1997)(holding, *inter alia*, that the Constitution does not afford a sitting president temporary immunity in "all but the most exceptional circumstances," and that the doctrine of separation of powers does not require the court to stay civil proceedings against the President).

required to disclose information about past sexual relationships[21] with other women,[22] United States District Judge Susan Webber Wright ruled that "the plaintiff [was] entitled to information regarding any individuals with whom the President had sexual relations . . . and who were . . . state or federal employees."[23] In late December the President responded to written discovery requests.[24] When asked under oath to identify women with whom he had sexual relations who were state or federal employees during a specified limited time frame, the President responded "none."[25] On January 17, 1998, the President was questioned under oath at a deposition regarding sexual relationships with women in the workplace.[26] During the deposition, the President denied that he had engaged in a "sexual affair, a "sexual relationship," or "sexual relations" with Ms. Lewinsky, while also stating that he "had no specific memory of being alone with Ms. Lewinsky, that he remembered few details of any gifts they might have exchanged, and indicated that no one except his attorneys had kept him informed of Ms. Lewinsky's status as a potential witness in the [*Jones v. Clinton*] case."[27] The evidence shows that the President's

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[21] The list of "Jane Does" in the *Jones v. Clinton* case and the evidence on each of them was held by the Judiciary Committee in Executive Session and redacted from public dissemination.

[22] OIC REFERRAL at 2.

[23] 921-DC-00000461 (Dec. 11, 1997 Order at 3).

[24] OIC REFERRAL at 2.

[25] V002-DC-00000053 (President Clinton's Supplemental Responses to Plaintiff's Second Set of Interrogatories at 2).

[26] OIC REFERRAL at 3.

[27] *Id.* at 3.

testimony during that deposition was perjurious, false, and misleading with the motive to hide the relationship for the purpose to defeat the *Jones v. Clinton* suit and deny Ms. Jones her right to a fair trial as an alleged victim of sexual harassment.

III. The Investigation By the Office of the Independent Counsel

On January 12, 1998, the OIC received information that Ms. Lewinsky was attempting to influence the testimony of a witness by the name of Linda Tripp[28] in the *Jones v. Clinton* case, and that Ms. Lewinsky intended to provide false testimony in the case.[29] The information was transmitted to Attorney General Janet Reno, who determined that an independent counsel should examine the matter for criminal wrongdoing.[30] Pursuant to the Independent Counsel statute, the Attorney General applied, and received, the authorization the jurisdiction of the OIC. Discovery in the *Jones v. Clinton* case involving Ms. Lewinsky was then stayed at the request of the OIC,[31]

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[28] Linda Tripp was also a witness in the OIC open investigation regarding the White House travel office firings and the FBI files.

[29] OIC REFERRAL at 3.

[30] *Id.* The Attorney General also received information regarding Ms. Lewinsky's job search and the possible involvement of Vernon Jordan. *Id.* These allegations were similar to allegations in the ongoing Whitewater investigation regarding possible "hush money" paid to former Deputy Attorney General Webster Hubbel in which Vernon Jordan was involved. *Id.*

[31] *Id.* at 4; see also *Jones v. Clinton*, 993 F. Supp. 1217 (1998). The court which granted the Independent Counsel's motion for limited intervention and stay of discovery based its decision on three grounds. *Jones v. Clinton*, 993 F. Supp. at 1219-1220. Specifically, the court determined that allowing the evidence of the Lewinsky investigation to be used in the *Jones* case might be unduly prejudicial to the President; *see* Fed. R. Evid. 403; and might be excluded by the trial judge based on Ms. Jones' burden in proving her sexual harassment claim. *Jones*, 993 F. Supp. at 1219. Further, the court determined that the trial must be conducted as expeditiously as possible. *Id.* Lastly, the court noted that the integrity of the independent criminal investigation warranted excluding evidence concerning Ms. Lewinsky. *Id.* The court determined that the risk of exposing information obtained in the pending criminal investigation outweighed the plaintiff's right to include such information. *Id.* at 1220.

which means that Ms. Jones was prevented from establishing facts that may have been otherwise obtainable through Ms. Lewinsky. The criminal investigation commenced,[32] and the results of that investigation were reported to Congress as required by 28 U.S.C. 595(c).

IV. The Findings of the Independent Counsel

In his testimony before the House Judiciary Committee, the Independent Counsel explained how the relationship between the President and Ms. Lewinsky became a matter of public concern.[33] First, the President was a defendant in a sexual harassment case which the Supreme Court ordered to proceed even though the defendant is a sitting President.[34] Second, "the law of sexual harassment and the law of evidence allow the plaintiff to inquire into the defendant's relationships with other women in the workplace, which in this case included President Clinton's relationship with Ms. Lewinsky."[35] Third, Judge Wright rejected the President's objections to such questions.[36] Fourth, perjury and obstruction of justice are federal

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[32] The Independent Counsel was granted jurisdiction to investigate whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law. OIC REFERRAL, APPENDICES, PART I, H. Doc. 105-311, at 6-7 (1998)[hereinafter H. Doc. 105-311]. Additionally, it had the authority to investigate federal crimes, obstruction of justice, and any material false testimony in violation of criminal law. *Id.*

[33] *See Statement of Independent Counsel Kenneth W. Starr Before the House Judiciary Committee*, 105th Cong., 2nd Sess. 9-10 (1998).

[34] *Id.* at 9. *See also Jones v. Clinton*, 117 S.Ct. 1636 (1997).

[35] *Statement of Independent Counsel Kenneth W. Starr Before the House Judiciary Committee*, 105th Cong., 2nd Sess. 9 (1998).

[36] *Id.*

crimes in civil cases, including sexual harassment cases.[37] Fifth, "the evidence suggests that the President and Ms. Lewinsky made false statements under oath and obstructed the judicial process in the *Jones v. Clinton* case by preventing the court from obtaining the truth about their relationship."[38]

A. Pattern of Deception

The OIC reported to the Committee that between December 5, 1997, and January 17, 1998, the President engaged in a pattern of deceptive behavior.[39] According to the Referral provided by the OIC, on December 5, 1997, Ms. Jones' attorneys identified Ms. Lewinsky as a potential witness in the sexual harassment lawsuit, and the President learned this fact within a day.[40] It is alleged that the President called Ms. Lewinsky at 2:00 a.m. on the morning of December 17, 1997, and informed her that she was a potential witness.[41] According to Ms. Lewinsky, the President suggested that she execute an affidavit to deny a sexual relationship and use "cover stories" or lies to explain why she visited the Oval Office on so many occasions.[42]

It is important to note that an affidavit is a legal document executed under oath. Yet, the

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[37] *Id.* at 10; *see also United States v. Holland*, 22 F.3d 1040, 1047-48 (11th Cir. 1994), *cert. denied*, 513 U.S. 1109 (1995)(rejecting that perjury is less serious when made in a civil proceeding); *United States v. McAfee*, 8 F.3d 1010, 1013-14 (5th Cir. 1993)(rejecting the argument that the perjury statute does not apply to civil depositions).

[38] *Statement of Independent Counsel Kenneth W. Starr Before the House Judiciary Committee*, 105th Cong. 2nd Sess. 10 (1998).

[39] *Id.* at 11.

[40] *Id.*

[41] *Id.* at 12.

[42] *Id.*

President was suggesting that she include falsehoods in the affidavit. The Referral states that on that date the President and Ms. Lewinsky thus had an agreement to lie in their sworn affidavits.[43]

A defendant in pending litigation suggesting that a potential witness in the lawsuit lie in an affidavit to avoid being deposed by the plaintiff is a criminal act that flies in the face of judicial integrity. Every American has the duty when under oath to tell the truth, the whole truth, and nothing but the truth in civil and criminal investigations.

Later, on December 23, 1997, the President answered interrogatories in the *Jones v. Clinton* case under oath.[44] Once again, the President, under oath, stated that he had not had sexual relations with any federal employees during a particular time frame.[45] As we now know, in fact the President did have sexual relations with a federal employee during the stated time frame. The effect of such lies was borne by Ms. Jones, who suffered the injustice of not having her day in court; she was precluded from presenting all potentially relevant and material evidence to the court.

On Sunday, December 28, 1997, the President met with Ms. Lewinsky at the White House and discussed the gifts the two had exchanged during their relationship.[46] "Ms. Lewinsky and the President also talked about the *Jones v. Clinton* case. In Ms. Lewinsky's account, she asked the President 'how he thought [she] got put on the witness list. He speculated that Linda Tripp or one of the uniformed Secret Service officers had told the Jones' attorneys about her. When Ms.

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[43] *Id.* at 13.

[44] *Id.*

[45] *Id.*

[46] *Id.* at 14.

Lewinsky mentioned her anxiety about the subpoena's reference to a hat pin, he said 'that sort of bothered [him], too.' He asked whether she had told anyone about the hat pin, and she assured him that she had not. At some point in the conversation, Ms. Lewinsky told the President, '[M]aybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty.' Ms. Lewinsky recalled that the President responded either 'I don't know' or 'Let me think about that.'"[47] According to Ms. Lewinsky, later that day the President's secretary, Betty Currie, drove to Ms. Lewinsky's home, picked up the gifts, and took them to her home where she stored them under her bed.[48]

It is important to note that these items were under court subpoena. They were potential items of evidence in a pending case. Once again, the facts here demonstrate intent to circumvent the laws. The President testified to the criminal grand jury in August that he had no particular concern about the gifts, yet the circumstantial evidence and the phone records suggest that Ms. Currie was directed to retrieve the gifts. Moreover, when asked about the gifts in the deposition in January 1998 he stated that he did not recall whether he gave Ms. Lewinsky gifts.[49]

B. Ms. Lewinsky's Job Search When She Was a Potential Witness

After the Supreme Court held that Ms. Jones was entitled to pursue her case against the President, the facts show that the President, with the help of his close friend and confidant Vernon

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[47] OIC REFERRAL at 101.

[48] *Statement of Independent Counsel Kenneth W. Starr Before the House Judiciary Committee*, 105th Cong. 2nd Sess. 14 (1998).

[49] *Id.* at 15.

Jordan, was instrumental in finding Ms. Lewinsky employment.[50] The evidence presented suggests that Vernon Jordan's assistance to Ms. Lewinsky in finding a job was intended to placate Ms. Lewinsky or ensure that she would not become a witness *against* the President.[51] The President wanted to keep Ms. Lewinsky on his side of the sexual harassment suit. If Ms. Lewinsky abandoned their "cover stories," the lies they used to keep the affair a secret, the President would have been vulnerable in legal and political respects, as will be discussed below.

C. Fraud Upon the Court

The evidence shows that in mid-January Ms. Lewinsky submitted a false affidavit in the *Jones v. Clinton* case in accordance with the "cover stories" she and the President discussed.[52] The President requested to see the affidavit before appearing for his deposition on January 17 and even stated during the deposition that he was "fully familiar" with the contents of Ms. Lewinsky's affidavit.[53] The evidence presented shows that the President allowed his attorney to attest to the truthfulness of Ms. Lewinsky's affidavit, and thus inform the court that "there [was] absolutely no sex of any kind in any manner, shape, or form" between the President and Ms. Lewinsky when he knew such information to be false. Such silence is a fraud upon the court. Further, the President was untruthful in the deposition when he testified that Ms. Lewinsky's affidavit was "absolutely

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[50] *Id.* at 16.

[51] *Id.*

[52] *Id.* at 17.

[53] *Id.*

true."[54] Thus, the evidence shows that the President engaged in a pattern of behavior designed to deceive the court in the *Jones v. Clinton* case through his own deception and that of Ms. Lewinsky.[55]

The facts also show that the President attempted to coach Ms. Currie after his deposition.[56] In regard to his relationship with Ms. Lewinsky the President stated to Ms. Currie: "you were always there when she was there, right? "We were never really alone," "you could see and hear everything," and "She wanted to have sex with me and I couldn't do that."[57] Ms. Currie testified that he reiterated these instructions again on either January 20 or 21.[58]

D. Damage Control

After the relationship involving Ms. Lewinsky became public on January 21, 1998, the

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[54] OIC REFERRAL at 15. "The President made false statements not only about his intimate relationship with Ms. Lewinsky, but about a whole host of matters. The President testified that he did not know that Vernon Jordan had met with Ms. Lewinsky and talked about the *Jones v. Clinton* case. That was untrue. He testified that he could not recall being alone with Ms. Lewinsky. That was untrue. He testified that he could not recall ever being in the Oval Office hallway with Ms. Lewinsky except perhaps when she was delivering pizza. That was untrue. He testified that he could not recall gifts exchanged between Ms. Lewinsky and him. That was untrue. He testified -- after a 14 second pause -- that he was "not sure" whether he had ever talked to Ms. Lewinsky about the possibility that she might be asked to testify in the lawsuit. That was untrue. The President testified that he did not know whether Ms. Lewinsky had been served a subpoena at the time he last saw her in December 1997. That was untrue. When his attorney read Ms. Lewinsky's affidavit denying a sexual relationship, the President stated that the affidavit was "absolutely true." That was untrue." *Id.* at 18-19.

[55] *Id.* at 19.

[56] *Id.* at 20.

[57] *Id.*

[58] *Id.* at 21.

President's former media consultant, Dick Morris, called the President to show his empathy.[59] Mr. Morris suggested the President confess.[60] "The President replied, 'But what about the legal thing? You know the legal thing? You know, Starr and perjury and all' . . . Mr. Morris [suggested he conduct a poll and he] called [the President] with the results [of the poll]. He stated that the American people were willing to forgive adultery but not perjury or obstruction of justice. The President replied, `Well, we just have to win, then.'"[61]

The President then engaged in a full scale attack on truth and honesty. On January 26, 1998, the President wagged his finger at the American people and denied a sexual relationship with "that woman, Ms. Lewinsky." He promised to cooperate with the investigation, yet he refused six requests to testify before the grand jury over a period of six months. He lied to his aides about the nature of his relationship with Ms. Lewinsky. Some of these aides then testified before the grand jury and unwittingly perpetuated these falsehoods. They also repeated the falsehoods in the public, the press and to some Members of Congress, who in turn began to characterize her as "a stalker," a "poor child...with serious emotional problems," and "she's fantasizing. And I haven't heard she played with a full deck in other experiences," and other

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[59] *Id.* at 22. Mr. Morris then conducted a poll to gauge public opinion. Questions in the poll included the following: "13. If President Clinton did lie and encouraged Monica to lie, do you think he should be removed from office? [the numbers "48-41" were written below the question] 14. If President Clinton lied, he committed the crime of perjury. If he encouraged Monica to lie, he committed the crime of obstruction of justice. In view of these facts, do you think President Clinton should be removed from office? [the numbers "60-30" were written below the question]" OIC REFERRAL, PART 2, H. Doc. 106-316, at 2956 (1998)[hereinafter H. Doc. 106-316].

[60] *Statement of Independent Counsel Kenneth W. Starr Before the House Judiciary Committee*, 105th Cong., 2nd Sess. 21 (1998).

[61] *Id.*

similar comments.[62] Chief Investigative Counsel David Schippers accused the White House of employing "the full power and credibility of the White House and the press corps to destroy" Ms. Lewinsky. This tactic was also used to attack the credibility of Paula Jones, the plaintiff in *Jones v. Clinton*. These actions by the President demonstrate a clear intent to mislead and impede the pursuit of the truth.[63] It is worth noting that sources within the White House stopped these vicious when there rumors that Ms. Lewinsky saved her blue dress stained with semen.

E. Grand Jury Testimony on August 17, 1998 [64]

Finally, when the President appeared before the federal criminal grand jury on August 17, 1998,[65] he testified that he did not lie in his civil deposition.[66] He also "denied any conduct that would establish that he had lied under oath at his civil deposition. The President thus denied certain conduct with Ms. Lewinsky and devised a variety of tortured and false definitions."[67]

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[62]Rep. Charles Rangel, Democrat of New York.

[63] *Id.* at 23.

[64] It is important to note that the Independent Counsel received permission from the United States Court of Appeals for the District of Columbia Circuit to disclose grand jury materials in accordance with its duty to report to Congress under 28 U.S.C. § 595(c). OIC REFERRAL 5 n.18. Generally, disclosure of grand jury testimony is prohibited under Rule 6(e) of the Federal Rules of Criminal Procedure. *See* Fed. R. Crim. P. 6 (e).

[65] The President was admonished by members of the Senate as to the absolute requirement that the President answer the questions put to him truthfully. Senator Hatch stated: "So help me, if he lies before the grand jury, that will be grounds for impeachment." *Id.* at 28. Similarly, Senator Moynihan stated that perjury before a grand jury is an impeachable offense. *Id.*

[66] *Id.*

[67] *Id.* Members on the Judiciary Committee have stated that the President was dishonest before the Grand Jury. *Id.* Senator-elect Schumer stated, "it is clear that the President lied when he testified before the grand jury." *Id.* Congressman Meehan stated that the President "engaged in a dangerous game of verbal Twister." *Id.*

Thus, over the eight-month period at issue, evidence has been presented that the President: made false statements under oath in a civil deposition, made false statements before a criminal grand jury, made false statements to his Cabinet and other professional staff, tampered with witnesses, obstructed justice by tampering with items under subpoena, and attempted to hide under a veil of Presidential authority to conceal the relationship and protect himself from investigation.[68]

F. The Allegations are Supported By Evidence

Physical evidence establishes the relationship between the President and Ms. Lewinsky. DNA tests conducted on semen stains from Ms. Lewinsky's clothing indicate that the President was the source of the semen.[69] The tests demonstrated that the "genetic markers on the semen, which match the President's DNA, are characteristic of one out of 7.87 trillion Caucasians.[70]

The allegations are also supported by extensive de-briefing of Ms. Lewinsky.[71] An initial interview was conducted with Ms. Lewinsky on July 27, 1998, to evaluate her credibility.[72] She was further interviewed over fifteen days, and provided testimony under oath on three occasions.[73] The OIC Referral states that: "[i]n the evaluation of experienced prosecutors and investigators, Ms. Lewinsky has provided truthful information. She has not falsely inculpated the

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[68] *Id.* at 29.

[69] OIC REFERRAL at 11.

[70] *Id.* at 12.

[71] *Id.*

[72] *Id.*

[73] *Id.*

President. Harming him, she has testified, is 'the last thing in the world I want to do.'"[74]

Testimony and information from numerous confidants of Ms. Lewinsky also provided information to the Independent Counsel.[75] Approximately eleven individuals received contemporaneous information from Ms. Lewinsky about her involvement with the President.[76] These individuals were questioned. Many of them provided testimony under oath before a federal grand jury.[77] Documents also lend support to Ms. Lewinsky's account.[78]

V. Violations of Law

This constitutional inquiry is not about sex or private conduct. This inquiry is about enforcing the law and demonstrating that: multiple obstructions of justice, multiple instances of perjury, the practice of engaging in false and misleading statements to the court, and witness tampers are attacks on the integrity of our system of justice.

As stated by Mr. Schippers, Chief Investigative Counsel, before the Judiciary Committee on December 10, 1998, "the real issues are whether the President of the United States testified falsely under oath; whether he engaged in a continuing plot to obstruct justice, to hide evidence,

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[74] *Id.* It is important to note that Ms. Lewinsky engaged in a cooperation agreement that includes safeguards to ensure that she tells the truth. *Id.* Under the cooperation agreement her immunity could be removed altogether by a federal district judge if it is found by a preponderance of the evidence that she lied. The "preponderance" standard, in basic terms, is comparable to a "more likely than not" standard and is not as difficult to prove as the "beyond a reasonable doubt" standard. Thus, if a federal judge finds that she lied, she could be punished to the fullest extent of the law.

[75] *Id.* at 13.

[76] *Id.*

[77] *Id.*

[78] *Id.* at 14.

to tamper with witnesses and to abuse the power of his office in furtherance of that plot. The ultimate issue is whether the President's course of conduct is such as to affect adversely the Office of the Presidency by bringing scandal and disrespect upon it and also upon the administration of justice, and whether he has acted in a manner contrary to his trust as President and subversive to the Rule of Law and Constitutional government."

A. Perjury

1. Grand Jury Perjury -- 18 U.S.C. § 1623

The grand jury process is an integral part of our criminal justice system. The Fifth Amendment assures that grand jury proceedings are a prerequisite to federal criminal charges and prosecution; "no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury." The grand jury engages in a truth finding mission.

Grand juries have the power to direct an investigation, and therefore counteract "suspicions of corruption and partisanship in criminal law enforcement."[79] The importance of the grand jury function is underscored by the fact that perjury in grand jury and court proceedings is discussed separately than perjury in general.[80] The Supreme Court has noted the gravity of perjury:

> In this constitutional process of securing a witness' testimony, perjury simply has no place whatever. Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. Effective restraints against the type of egregious offense are therefore imperative. The power of subpoena, broad as

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[79] WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 8.6 (2d. ed. 1992).

[80] See 18 U.S.C. § 1623; *cf* 18 U.S.C. § 1621.

> it is, and the power of contempt for refusing to answer, drastic as that is - and the solemnity of the oath - cannot insure truthful answers. Hence Congress has made the giving of false answers a criminal act punishable by severe penalties; in no other way can criminal conduct be flushed into the open where the law can deal with it.
>
> Similarly, our cases have consistently - indeed without exception - allowed sanction for false statement or perjury; they have done so even in instances where the perjurer complained that the Government exceeded its constitutional powers in making the inquiry.[81]

2. Perjury In General -- 18 U.S.C. § 1621

Perjury consists of providing false testimony as to material facts while under oath: "The essential elements of the crime of perjury as defined in 18 U.S.C. § 1621 . . . are (1) an oath authorized by a law of the United States, (2) taken before a competent tribunal, officer, or person, and (3) a false statement willfully made as to facts material to the hearing."[82] Materiality is based on the circumstances and context in which the statement was made.[83] There are no exceptions to perjury for sexual matters.

Some have argued that perjury is less important in civil cases and is rarely prosecuted.

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[81] *United States v. Mandujano*, 425 U.S. 564, 576-77(1976)(plurality opinion)(footnote and citations omitted).

[82] *United States v. Hvass*, 355 U.S. 570, 574 (1958)(internal quotation marks omitted); see also 18 U.S.C. § 1621. Section 1621 carries a penalty of fines or imprisonment for up to five years.

[83] *See, e.g., United States v. Holley*, 942 F.2d 916, 923 (5th Cir. 1991)("the government must prove that Holley's statements were, *at the time made*, material to the proceeding in which his deposition was taken." (emphasis added.)); *United States v. Martinez*, 855 F.2d 621, 624 (9th Cir. 1988)("The proper test is to judge materiality in terms of its potential for obstructing justice *at the time the statement* is *made* . . ." (emphasis added)); *United States v. Percell*, 526 F.2d 189, 190 (9th Cir. 1975).

Such assertions are misguided.[84] As stated by the United States Court of Appeals for the 11th Circuit, "we categorically reject any suggestion, implicit or otherwise, that perjury is somehow less serious when made in a civil proceeding. *Perjury, regardless of the setting, is a serious offense that results in incalculable harm to the functioning and integrity of the legal system as well as to private individuals.*"[85] In fact, this year the Justice Department prosecuted a woman for perjury pertaining to a sexual relationship.[86] The woman, Ms. Battalino, testified before the Judiciary Committee. She was sentenced to one year home detention and fined $3500 in court costs.[87]

B. THE ARTICLES OF IMPEACHMENT

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[84] *See, e.g.*, *United States v. Wilkinson*, 137 F.3d 214 (4th Cir. 1998)(perjury in civil deposition); *United States v. Kersey*, 130 F.3d 1463 (11th Cir. 1997)(perjury in civil deposition and affidavit); *United States v. Sassanelli*, 118 F.3d 495 (6th Cir. 1997)(perjury in civil affidavit); *Virgin Islands v. Davis*, 43 F.3d 41 (3rd Cir. 1994), *cert. denied*, 515 U.S. 1123 (1995)(perjury in civil case); *United States v. Thompson*, 29 F.3d 62 (2d Cir. 1994)(perjury in bankruptcy proceeding); *United States v. Chaplin*, 25 F.3d 1373 (7th Cir. 1994)(perjury in bankruptcy deposition); *United States v. Nebel*, 16 F.3d 1222, 1994 WL 12647 (6th Cir. 1994)(unpublished)(perjury in civil deposition); *United States v. Kross*, 14 F.3d 751 (2d Cir.), *cert. denied*, 513 U.S. 828 (1994)(perjury in civil deposition); *United States v. Markiewicz*, 978 F.2d 786 (2d cir. 1992), *cert. denied*, 506 U.S. 1086 (1993)(perjury in civil deposition); *United States v. Clark*, 918 F.2d 843 (9th Cir. 1990)(perjury in civil deposition); *United States v. Cox*, 859 F.2d 151 (4th Cir. 1988), *cert. denied*, 488 U.S. 1044 (1989)(unpublished)(perjury in civil trial); *United States v. Holley*, 942 F.2d 916 (5th Cir. 1991)(perjury in civil deposition).

[85] *United States v. Holland*, 22 F.3d 1040, 1047-48 (11th Cir. 1994), *cert. denied*, 513 U.S. 1109 (1995)(emphasis added); *see also Untied States v. McAfee*, 8 F.3d 1010, 1013-14 (5th Cir. 1993)(rejecting the argument that the perjury statute does not apply to civil depositions "[t]here is no real substantive difference between federal civil and federal criminal proceedings [in regard to perjury].").

[86] *United States v. Battalino*, Case No. CR-98-038-S-EJL (D. Idaho); *see also* David Tell, *Bill Clinton: This Precedent's For You*, THE WEEKLY STANDARD, June 22, 1998, at 9.

[87] David Tell, *Contagious Corruption*, THE WEEKLY STANDARD, August 3, 1998, at 9.

(1) Article I – Grand Jury Perjury

> In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:
>
> On August 17, 1998, William Jefferson Clinton swore to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.
>
> In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.
>
> Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Article I passed the Judiciary Committee by a vote of 21 to 16 on December 11, 1998. I voted in support of its passage.

In the drafting of the Articles of Impeachment, I successfully convinced my colleagues to separate the perjurious conduct of the President into two separate articles, making Article I

pertain to grand jury perjury, while making all other perjurious statements into a separate article, Article II. The grand jury system, which common law refers to as the "peoples' panel" to serve as the community's watchdog, has screening and investigative functions to develop evidence in search of the sometimes painful truth with unbridled candor. Throughout legal history, defense lawyers have been critics, often attacking the prosecutor and the process, wherein a grand jury's broad investigative power and independence are linked with criminal procedure, by calling it an "inquisitorial element."

"The Supreme Court has described the grand jury's authority to compel testimony as '[a]mong the necessary and most important of the powers * * * [that] assure the effective functioning of government in an ordered society.'"[88] For this reason, it is proper that the first Article of Impeachment cite grand jury perjury.

The specific allegations contained in the first article are that the President provided perjurious, false and misleading testimony to the grand jury on August 17, 1998, regarding: the nature and details of his relationship with Ms. Lewinsky; prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.[89]

a. The President Willfully Provided Perjurious, False and Misleading

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[88] WAYNE R. LAFAVE & JEROLD H. ISRAEL, CRIMINAL PROCEDURE § 8.6 (2d. ed. 1992)(citation omitted).

[89] H. Res. ___, 105th Cong., 2nd Sess. (1998).

Testimony To The Grand Jury Concerning the Nature and Details of The Relationship With A Subordinate Government Employee.

The evidence presented demonstrates that President Clinton committed perjury before the grand jury on August 17, 1998. The President gave false and misleading testimony before the grand jury regarding his conduct with a subordinate federal employee who was a witness in the federal civil rights action brought against him. A key inquiry, which could demonstrate perjury in the civil deposition and in responses to interrogatories from the OIC, was whether the President had a sexual relationship with Ms. Lewinsky as defined in *Jones v. Clinton*.

The President lied before the grand jury three times. First, the President stated that oral sex was not included in the definition of sexual relations employed in the *Jones v. Clinton* deposition.[90] It is an incredible torture of words for the President to assert that oral sex would not fall under "sexual relationship," "sexual relations," or a "sexual affair." The President interpreted the definition of sexual relations to mean that one who is receiving a sexual favor, or engaged in activity short of sexual intercourse, is not involved in sexual relations.

Second, even if the definition of sexual relations as it was understood by the President is employed, the President engaged in sexual relations with Ms. Lewinsky. The thrust of the President's understanding of the definition of the sex is that if the witness was the person who was touched, rather than provided the touching, then the conduct does not fall under the definition of sexual relations. Substantial and credible evidence shows that on numerous occasions the President did in fact touch Ms. Lewinsky as defined by the court in *Jones v. Clinton*. In fact, Ms. Lewinsky testified under oath that she had ten sexual encounters with the

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[90] OIC REFERRAL at 148.

President, while several of Ms. Lewinsky's friends, family members and counselors testified that she had informed them of a sexual relationship during the pertinent time period. Another item of evidence includes the DNA test. Yet, before the grand jury, the President lied by stating he did not engage in sexual relations with Ms. Lewinsky.

Third, the President made a false statement as to when his relationship with Ms. Lewinsky began.[91] Before the grand jury the President testified that the relationship did not begin until 1996, when Ms. Lewinsky was a White House employee.[92] However, corroborated evidence shows that the affair began during the government shut-down of November, 1995, when she was only a 22 year old intern.[93] According to Ms. Lewinsky's testimony, after first sexual encounter the President tugged on her intern badge and stated that her status as an intern could be a problem.[94]

Facing such dire circumstances, the President decided to evade the truth before the grand jury. He admitted to an "inappropriate intimate relationship" with Lewinsky but denied that he lied in the *Jones v. Clinton* deposition when he said he did not have sexual relations with Ms. Lewinsky.[95] The President did not want to admit that he had oral sex with a 22 year-old White House intern.

The extensive details of the sexual contacts between the President and Ms. Lewinsky was

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[91] *Id.* at 149.

[92] *Id.*

[93] *Id.*

[94] *Id.* at 150.

[95] OIC REFERRAL at 146-50.

important to this investigation, because it is only through an examination of precisely what sex acts occurred that one can determine whether the President lied. Based on the detailed information provided by Ms. Lewinsky, as well as physical evidence such as DNA evidence, it is clear the President and Ms. Lewinsky engaged in sexual relations under the definition used in the *Jones v. Clinton* case.

During the grand jury inquiry, "the President was asked whether Ms. Lewinsky performed oral sex on him, and if so, whether he committed perjury by denying a sexual relationship, sexual affair, or sexual relations with her. The President refused to say whether he had oral sex. Instead, the President said (i) that the undefined terms "sexual affair," "sexual relationship," and "sexual relations" necessarily require sexual intercourse, (ii) that he had not engaged in intercourse with Ms. Lewinsky, and (iii) that he therefore had not committed perjury in denying a sexual relationship, sexual affair, or sexual relations."[96]

The President's defense relies on a twisted, and hair-splitting interpretation of sexual relations. Such a contrived interpretation of the statute flies in the face of testimony which provides "the truth, the whole truth, and nothing but the truth."

If the President admitted a sexual relationship with Ms. Lewinsky before the grand jury, he would have revealed that he lied in the prior proceeding and in his responses to interrogatories. Such concessions would have made him vulnerable as a defendant in the civil rights lawsuit filed by Paula Jones, whose appeal was pending, and would have jeopardized his family structure, and would have caused enormous embarrassment to his family and personal integrity. Thus, in context, the President had motive to lie. In fact, before the Judiciary Committee the White

[96] *Id.* at 146.

House counsel Mr. Craig stated: "the President's testimony was evasive, incomplete, misleading, and even maddening." Those facts in evidence, coupled with the President's demeanor and motive to lie, comprise compelling evidence as to his state of mind that he willfully gave false testimony to the grand jury.

b. The President Willfully Provided Perjurious, False and Misleading Testimony to the Grand Jury Regarding Prior Perjurious, False and Misleading Testimony Provided in A Federal Civil Rights Action Brought Against Him.

The President made a false and misleading statement before the grand jury when he asserted that the testimony he gave in his deposition taken as a part of the civil rights action brought against him in *Jones v. Clinton* was truthful.

Throughout his grand jury testimony, the President acknowledged his oath and recognized that he was bound to tell the truth during the January 17, 1998, deposition in the *Jones v. Clinton* case, as well as his testimony before the grand jury on August 17, 1998. The record reflects that he lied.

In contrast to his assertions to testify truthfully when deposed on January 17, 1998, and before the grand jury on August 17, 1998, the record reflects that the President lied, thereby committing grand jury perjury.

c. The President Willfully Provided Perjurious, False and Misleading Testimony to the Grand Jury Regarding Prior False And Misleading Statements He Allowed His Attorney To Make To A Federal Judge In That Civil Rights Action Brought Against Him.

Ms. Lewinsky's affidavit stated that she and the President had no sexual relations at any time. The evidence shows that the President was aware of Ms. Lewinsky's affidavit. Ms. Lewinsky's attorney, Mr. Frank Carter, worked closely with the President's attorney, Mr. Bennett, to ensure the affidavit was filed with the court prior to the civil deposition.[97] The President allowed his attorney to represent to a federal judge that Ms. Lewinsky's affidavit was true and accurate. Thus, the President sat back and allowed his attorney to report facts to the court which he knew to be false.

The President argues that he was unaware of what his attorney was doing at the time and therefore did not allow his attorney to represent false information to the court. Yet, Mr. Schippers presentation of the videotape of the deposition shows that the President was closely following the actions and arguments of his attorney. Furthermore it is incredulous to assert that at the time the court was arguing whether to open "Pandora's Box" the President was unaware of his attorney's actions. As stated, *truthful* information about his relationship with Ms. Lewinsky was potentially disastrous to the President: it would demonstrate he lied in interrogatories answered in December; it would have made him vulnerable as a defendant in a civil rights sexual harassment lawsuit; it would have greatly embarrassed his family; and, it tarnish his political standing.

During the grand jury testimony the President was asked about the deposition. The President argued that when his attorney, Mr. Bennett, informed the court that there "is no sex of any kind . . . ." Mr. Bennett was speaking only in the present tense. The President stated, "It depends upon what the meaning of "is" is, and that "if it means there is none, that was a

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[97] OIC REFERRAL at 174.

completely true statement." [98] President Clinton is guilty of what C.S. Lewis called "verbicide," murder of the plain spoken word. His attempt to invoke the literal truth defense fails under the reasonableness test.

As stated in the OIC Referral regarding sworn testimony in the affidavit and its use:

> Monica Lewinsky testified that President Clinton called her around 2:00 to 2:30 a.m. on December 17, 1997, and told her that her name was on the *Jones* case witness list. As noted in her February 1 handwritten statement: 'When asked what to do if she was subpoenaed, the Pres. [sic] suggested she could sign an affidavit. . . .' Ms. Lewinsky said she is '100% sure' that the President suggested that she might want to sign an affidavit.
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> Ms. Lewinsky understood the President's advice to mean that she might be able to execute an affidavit that would not disclose the true nature of their relationship. In order 'to prevent me from being deposed,' she said she would need an affidavit that 'could range from anywhere between maybe just somehow mentioning, you know, innocuous things or going as far as maybe having to deny any kind of relationship.'
>
> Ms. Lewinsky stated that the President never *explicitly* told her to lie. Instead, as she explained, they both understood from their conversations that they would continue their pattern of covering up and lying about the relationship. In that regard, the President never said they must now tell the truth under oath; to the contrary, as Ms. Lewinsky stated: '[I]t wasn't as if the President called me and said, 'You know, Monica, you're on the witness list, this is going to be really hard for us, we're going to have to tell the truth and be humiliated in front of the entire world about what we've done,' which I would have fought him on probably. *That was different. And by him not calling me and saying that, you know, I knew what that meant.'*
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> Ms. Jones's lawyers served Ms. Lewinsky with a subpoena on December 19, 1997. Ms. Lewinsky contacted Vernon Jordan, who in turn put her in contact with attorney Frank Carter. Based on the information that Ms. Lewinsky provided, Mr. Carter prepared an

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[98] OIC REFERRAL, PART I at 476-77.

affidavit which stated: 'I have never had a sexual relationship with the President.'

After Mr. Carter drafted the affidavit, Ms. Lewinsky spoke to the President by phone on January 5th. She asked the President if he wanted to see the draft affidavit. According to Ms. Lewinsky, the President replied that he did not need to see it because he had already 'seen 15 others.'

Mr. Jordan confirmed that President Clinton knew that Ms. Lewinsky planned to execute an affidavit denying a sexual relationship. Mr. Jordan further testified that he informed President Clinton when Ms. Lewinsky signed the affidavit. Ms. Lewinsky's affidavit was sent to the federal court in Arkansas on January 16, 1998 - the day before the President's deposition - as part of her motion to quash the deposition subpoena.

Two days before the President's deposition, his lawyer, Robert Bennett, obtained a copy of Ms. Lewinsky's affidavit from Mr. Carter. At the President's deposition, Ms. Jones's counsel asked questions about the President's relationship with Ms. Lewinsky. Mr. Bennett objected to the 'innuendo' of the questions, noting that Ms. Lewinsky had signed an affidavit denying a sexual relationship, which according to Mr. Bennett, indicated that '*there is absolutely no sex of any kind in any manner, shape or form.*' Mr. Bennett said that the President was 'fully aware of Ms. Lewinsky's affidavit.' Mr. Bennett affirmatively used the affidavit in an effort to cut off questioning. The President said nothing - even though, as he knew, the affidavit was false. Judge Wright overruled the objection and allowed the questioning to continue.

Later, Mr. Bennett read Ms. Lewinsky's affidavit denying a 'sexual relationship' to the President and asked him: 'Is that a true and accurate statement as far as you know it?' The President answered, '*That is absolutely true.*'[99]

d. The President Willfully Provided Perjurious, False and Misleading Testimony to the Grand Jury Regarding His Corrupt Efforts To Influence

[99] OIC REFERRAL at 173-75.

The Testimony Of Witnesses And To Impede The Discovery Of Evidence In That Civil Rights Action.

1. The President gave false and misleading testimony before the grand jury when he denied engaging in a plan to hide evidence that had been subpoenaed in the federal civil rights action against him.

Starting in November 1995, the President engaged in sexual relations with Ms. Lewinsky. In order to keep the relationship a secret, they devised "cover stories." As discussed, on December 5, 1997, Ms. Jones' attorneys identified Ms. Lewinsky as a potential witness in the case, and the President learned this fact within a day.[100] The President then called Ms. Lewinsky at 2:00 a.m. on the morning of December 17, 1997, and informed her that she was a potential witness.[101] According to Ms. Lewinsky, the President suggested that she execute an affidavit to avoid a deposition, and that they continue with the usual "cover stories" to explain why she visited the oval office on so many occasions.[102] The "cover stories" were lies. The President suggested to a potential witness in a federal civil rights case to lie.

As to the discovery of evidence in the *Jones v. Clinton* case, according to the evidence presented by the OIC, Ms. Lewinsky gave the President approximately 38 gifts. On December 28, 1997, the President and Ms. Lewinsky had a conversation about the gifts they exchanged, Ms. Lewinsky said: "'I mentioned that I had been concerned about the hat pin being on the subpoena and [the President] said that that had sort of concerned him also and asked me if I had told anyone

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[100] *Id.*

[101] *Id.* at 12.

[102] *Id.*

that he had given me this hat pin and I said no."[103] Ms. Currie also testified to having had conversations with the President about certain gifts.[104]

That day, the Sunday after Christmas, Ms. Currie went over to Ms. Lewinsky's home and retrieved a box of gifts from her. She took the gifts home and hid them under her bed.

It is unreasonable to believe that a young former White House intern would have the clout to summon the secretary to the President of the United States to her house on the Sunday after Christmas in order to pick up personal gifts so that she could hide them under her bed. Reasonable people do not subscribe to the absurd. These gifts were all under subpoena in the *Jones* v. *Clinton* case. The facts surrounding the retrieval of the gifts lead a reasonable person to the conclusion that Ms. Currie was instructed to do so by the President.

President Clinton testified before the grand jury, and reiterated to the Judiciary Committee in Request for Admission No. 26, that he did not recall any conversation with Ms. Currie on or about December 28 1997, about gifts previously given to Ms. Lewinsky and that he never told Ms. Currie to take possession of the gifts he had given to Ms. Lewinsky.[105] This answer is false and misleading because the evidence reveals that Betty Currie did place a call to Monica Lewinsky about the gifts and there is no reason for her to do so unless instructed by the President. Because she did not personally know of the gift issue, there is no other way Ms. Currie could have known to call Ms. Lewinsky about the gifts unless the President told her to do so. The President had a motive to conceal the gifts because both he and Ms. Lewinsky were concerned

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[103] *Id.* at 156.

[104] *Id.*

[105] H. Doc. 105-311, at 502.

that the gifts might raise questions about their relationship. By confirming that the gifts would not be produced, the President ensured that these questions would not arise. The concealment and non-production of the gifts to the attorneys' for Paula Jones allowed the President to provide false and misleading statements about the gifts at his deposition in the case of *Jones v. Clinton*. Additionally, Ms. Lewinsky's testimony on this subject has been consistent and unequivocal; she provided the same facts in February, July and August. Betty Currie's cell phone records show that she placed a one minute call to Monica Lewinsky on the afternoon of December 28th.

2. The President Made False And Misleading Statements Before The Grand Jury Regarding His Knowledge That The Contents Of An Affidavit Executed By A Subordinate Federal Employee Who Was A Witness In The Federal Civil Rights Action Brought Against Him Were Untrue.

Ms. Lewinsky filed an affidavit in the *Jones v. Clinton* case, in which she denied ever having a sexual relationship with the President. During his deposition in the case, the President affirmed that the statement of Ms. Lewinsky in her affidavit was "absolutely true." Ms. Lewinsky testified that she is "100 percent sure" that the President suggested that she might want to sign an affidavit to avoid testifying in the *Jones v. Clinton* case.

The President told the Judiciary Committee that he believed he told Ms. Lewinsky "other witnesses had executed affidavits, and there was a chance they would not have to testify."[106] Before the criminal grand jury in August, the President testified that he hoped that Ms. Lewinsky could avoid being deposed by filing an affidavit, but that he did not want her to submit a false

[106] Request for Admission No. 18.

affidavit.[107]

Such testimony is false and misleading because it would have been impossible for Ms. Lewinsky to file a truthful affidavit without jeopardizing the President by being deposed. Ms. Jones' attorneys were seeking information about other state or federal employees with whom the President had sexual relationships. Judge Susan Weber Wright ruled that Ms. Jones was entitled to such discovery information. The President must have been cognizant of such facts which renders his grand jury testimony on these facts false and misleading. In his efforts to be evasive, the President favored a feigned memory after citing Betty Currie as a source for the answer, thus setting up Ms. Currie as a potential witness.

While testifying before the grand jury, Ms. Currie was more precise in her recollection of the two meetings. An OIC attorney asked her if the President had made a series of leading statements or questions that were similar to the following:

1. "You were always there when she [Monica Lewinsky] was there, right? We were never really alone."

2. "You could see and hear everything."

3. "Monica came on to me, and I never touched her, right?"

4. "She wanted to have sex with me and I couldn't do that."[108]

Based on his demeanor and the manner in which he asked the questions, she concluded that the President wanted her to agree with him. Ms. Currie thought that the President was

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[107] H. DOC. 105-311, at 571.

[108] OIC REFERRAL at 191-192.

attempting to gauge her reaction, and appeared concerned.[109] Ms. Currie also acknowledged that while she indicated to the President that she agreed with him, in fact she knew that, at times, he was alone with Ms. Lewinsky and that she could not or did not hear or see the two of them while they were alone.

3. The President made false and misleading statements before the grand jury when he recited a false account of the facts regarding his interactions with Monica Lewinsky to Betty Currie, a potential witness in the federal civil rights action brought against him.

The evidence shows that immediately after the President was deposed in the *Jones v. Clinton* case he attempted to influence the testimony of Ms. Betty Currie. Ms. Currie testified that the President discussed Ms. Lewinsky with her, and that his questions were actually statements with which he wanted her to agree.[110]

Before the grand jury the President was vague and evasive on these points. He stated that he talked to Ms. Currie right after his deposition, but that he talked to her in an effort to learn as much about the matter as he could.[111] He further stated that he instructed Ms. Currie to "tell the truth" after learning she could have been called to testify.[112] The President also testified that he could not remember how many times he talked to Ms. Currie, however Ms. Currie testified to two such discussions.

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[109] *Id.*

[110] H. Doc. 105-310, at 191-92.

[111] *See* Request for Admission No. 52.

[112] H. Doc. 105-311, at 591.

(2) Article II -- Other Perjurious Testimony

In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has willfully corrupted and manipulated the judicial process of the United States for his personal gain and exoneration, impeding the administration of justice, in that:

(1) On December 23, 1997, William Jefferson Clinton, in sworn answers to written questions asked as part of a Federal civil rights action brought against him, willfully provided perjurious, false and misleading testimony in response to questions deemed relevant by a Federal judge concerning conduct and proposed conduct with subordinate employees.

(2) On January 17, 1998, William Jefferson Clinton swore under oath to tell the truth, the whole truth, and nothing but the truth in a deposition given as part of a Federal civil right action brought against him. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony in response to questions deemed relevant by a Federal judge concerning the nature and details of his relationship with a subordinate Government employee, his knowledge of that employee's involvement and participation in the civil rights action brought against him, and his corrupt efforts to influence the testimony of that employee.

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive to the rule of law and justice, to the manifest injury of the people of the United States.

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Article II passed the Judiciary Committee by a vote of 20 to 17 on December 11, 1998. I voted in support of its passage.

The specific allegations contained in Article II are that the President willfully provided perjurious, false and misleading testimony in answers to written questions posed by the plaintiff in *Jones v. Clinton* on December 23, 1997, and that the President willfully provided perjurious, false and misleading testimony in answers to questions proposed by the plaintiff's attorney in a deposition on January 17, 1998.

a. On December 23, 1997, the President, in Sworn Answers to Written Questions Asked As Part of A Federal Civil Rights Action Brought Against Him, Willfully Provided Perjurious, False and Misleading Testimony In Response To Questions Deemed Relevant By A Federal Judge Concerning Conduct And Proposed Conduct With Subordinate Employees.

As stated previously, on December 23, 1997, the President answered interrogatories in the *Jones* case under oath.[113] When asked under oath to identify women with whom he had sexual relations who were state or federal employees during a specified limited time frame, the President responded "none."[114] The President lied.

b. On January 17, 1998, the President Swore Under Oath To Tell The Truth, The Whole Truth, And Nothing But The Truth In a Deposition

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[113] OIC REFERRAL. at 13.

[114] V002-DC-00000053 (President Clinton's Supplemental Responses to Plaintiff's Second Set of Interrogatories at 2).

Given As Part of A Federal Civil Rights Action Brought Against Him. Contrary To That Oath, the President Willfully Provided Perjurious, False and Misleading Testimony In Response To Questions Deemed Relevant By a Federal Judge Concerning The Nature and Details Of His Relationship With A Subordinate Government Employee And His Corrupt Efforts To Influence The Testimony Of That Employee.

On January 17, 1998, the President was questioned under oath at a deposition regarding sexual relationships with women in the workplace.[115] During the deposition, the President denied that he had engaged in a "sexual affair, a "sexual relationship," or "sexual relations" with Ms. Lewinsky, while also stating that he "had no specific memory of being alone with Ms. Lewinsky, that he remembered few details of any gifts they might have exchanged, and indicated that no one except his attorneys had kept him informed of Ms. Lewinsky's status as a potential witness in the [*Jones v. Clinton*] case."[116] Under oath the President stated that he had not had sexual relations with any federal employees during a particular time frame.[117] As we now know, in fact the President did have sexual relations with a federal employee during the stated time frame. The President lied.

According to Ms. Lewinsky, she and the President had ten sexual encounters, eight while she was a White House intern or employee, and two thereafter. The sexual encounters generally occurred in or near the Oval Office private study. The evidence indicates that the conduct the

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[115] OIC REFERRAL at 3.

[116] *Id.* at 3.

[117] *Id.*

President had with Ms. Lewinsky met the definition of sex, and that he lied about their conduct. Ms. Lewinsky testified that her physical relationship with the President included oral sex but not sexual intercourse.

c. The President Lied in His Deposition About Being Alone in Certain Locations of the White House with A Subordinate Federal Employee Who Was a Witness In The Action Brought Against Him.

The evidence is clear that Ms. Lewinsky and the President did have sexual relations when they were "alone." There is no evidence that anyone saw them, or that they were caught in a sex act, which would lead reasonable minds to believe that their relationship was always covert. They were in fact alone. The President's attempt to defend himself on this charge is a tortured definition of the word "alone," wherein it refers to an entire geographical area, rather than the immediate surroundings. When the President said he was never alone with Ms. Lewinsky, he meant he was never alone in the White House oval office complex. In fact, the President and Ms. Lewinsky were alone on at least 21 occasions. Naturally, in the literal sense, one is never alone in the cosmos. Reasonable people do not believe the absurd. Reasonable people would believe that the President's testimony was perjurious.

The President relies on the literal truth defense. He asserts that he is never really alone in the White House. There must be a objective reasonable basis for a subjective belief to have merit. The President's subjective belief is neither reasonable nor sufficient to shield him from perjury charges. There was no reasonable basis. The evidence supports that the President lied.

d. The President Lied In His Deposition About His Knowledge of Gifts Exchanged Between Himself and a Subordinate Federal Employee

Who Was A Witness in the Action Brought Against Him.

The evidence shows that the President presented Ms. Lewinsky with a number of gifts, including, a lithograph, a hat pin, a large "Black Dog" canvas bag, a large "Rockettes" blanket, a pin of the New York City skyline, a box of chocolates, a pair of sunglasses, a stuffed animal from the "Black Dog," a marble bear's head, a London pin., a shamrock pin, an Annie Lennox compact disc, and Davidoff cigars.[118] In the deposition of the President he provided false answers when he testified that Ms. Lewinsky has given him "a book or two." The evidence also shows that Ms. Lewinsky gave the President approximately 38 gifts.[119] The President gave Ms. Lewinsky approximately 24 gifts. The evidence supports that the President lied.

e. The President Lied In His Deposition About His Knowledge Regarding Whether He Had Ever Spoken To A Subordinate Federal Employee About The Possibility That Such Subordinate Employee Might Be Called As A Witness To Testify In The Federal Civil Rights Action Brought Against Him.

When asked in the deposition about whether he talked to Ms. Lewinsky about her being called as a witness the President testified that he could not recall. However, the evidence shows that on December 17, 1997, the President called Ms. Lewinsky and informed her that he had seen the witness list and that her name was on it.[120] Moreover, he told her that if she was called as a

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[118] OIC REFERRAL at 101.

[119] *Id* at 157.

[120] *Id.* at 843.

witness she was to notify Ms. Currie.[121] The evidence supports that the President lied.

f. The President lied in his deposition about his knowledge of the service of a subpoena to a subordinate federal employee to testify as a witness in the federal civil rights action brought against him.

In the civil deposition, the President was asked the question:

"Q. Did she tell you she had been served with a subpoena in this case?

A. No. I don't know if she had been.

Q. Did anyone other than your attorneys tell you that Monica Lewinsky had been served with a subpoena in this case?

A. I don't think so."[122]

The evidence shows that the President discussed with Vernon Jordan the fact that Ms. Lewinsky was served with a subpoena. The testimony of the President and Vernon Jordan is in direct conflict on this fact.[123] The record indicates that the President knew, before his deposition, that Ms. Lewinsky had been subpoenaed in the case of *Jones v. Clinton*.[124] Ms. Lewinsky was served with a subpoena on December 19, 1997, a subpoena that commanded her to appear for a deposition on January 23, 1998, and to produce certain documents and gifts.[125] Monica Lewinsky

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[121] *Id.*

[122] Deposition of President Clinton in the case of *Jones v. Clinton*, January 18, 1998, p. 68.

[123] OIC REFERRAL at 96.

[124] *Id.* at 97.

[125] *Id* at 96.

talked to Vernon Jordan about the subpoena on December 19, 1997, and Mr. Jordan spoke to the President that afternoon and again that evening.[126] He told the President that he had met with Ms. Lewinsky, she had been subpoenaed, and that he planned on obtaining an attorney for her.[127] On Sunday, December 28, 1997, the President met with Ms. Lewinsky who expressed concerns about the subpoena's demand for gifts he had given her.[128] The evidence supports that the President lied.

g. The President Lied In His Deposition About His Knowledge Of The Final Conversation He Had With A Subordinate Employee Who Was A Witness In The Federal Civil Rights Action Brought Against Him.

The testimony of the President and Ms. Lewinsky regarding their last meeting are in direct conflict. The President testified that he stuck his head out of his office and said hello to Ms. Lewinsky at the time of their last meeting. Ms. Lewinsky testified that the President gave her Christmas gifts, and they talked about the *Jones v. Clinton* case.[129] Specifically, she wanted to know how she got put on the witness list and they discussed the subpoena and its direct reference to a hat pin which was the first gift he had ever given her.[130] The evidence supports that the

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[126] *Id.* at 96-97.

[127] *Id.* at 97.

[128] *Id.*

[129] *Id.* at 101.

[130] *Id.* Corroborating evidence shows that Ms. Currie called Ms. Lewinsky and asked her to come to the White House at 8:30 a.m. on the morning of December 28, the day of their last meeting. WAVES records indicate that the meeting was requested by Ms. Currie and that Ms. Lewinsky entered the White House at 8:16 a.m., December 28, 1997. After she arrived at the Oval Office, she, the President and Ms. Currie played with Buddy, the President's dog, and

President lied.

h. The President Lied In His Deposition About His Knowledge That The Contents Of An Affidavit Executed By A Subordinate Federal Employee Who Was A Witness In The Federal Civil Rights Action Brought Against Him.

As discussed elsewhere, the President affirmed to the court in his civil deposition the truth of the statements contained in Ms. Lewinsky's affidavit regarding sexual relations. The President and Ms. Lewinsky concocted a cover story with the willful intent to deceive the court. As the evidence shows, the President did in fact have sexual relations with Ms. Lewinsky. The evidence supports that the President lied.

(3) Article III -- Obstruction of Justice

> In his conduct while President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, and has to that end engaged personally, and through his subordinates and agents, in a course of conduct or scheme designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to a Federal civil rights action brought against him in a duly instituted judicial proceeding.
>
> The means used to implement this course of conduct or scheme included one or more of the following acts:

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chatted. Then the President took Ms. Lewinsky into the study and gave her several Christmas presents: a marble bear's head, a Rockettes blanket, a Black Dog stuffed animal, a small box of chocolate, a pair of joke sunglasses, and a pin with the New York skyline on it. Ms. Lewinsky testified that on this occasion she and the President had a "passionate and physically intimate kiss." *Id.*

(1) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false and misleading.

(2) On or about December 17, 1997, William Jefferson Clinton corruptly encouraged a witness in a Federal civil rights action brought against him to give perjurious, false and misleading testimony if and when called to testify personally in that proceeding.

(3) On or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him.

(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him in order to corruptly prevent the truthful testimony of that witness in that proceeding at a time when the truthful testimony of that witness could have been harmed.

(5) On January 17, 1998, at his deposition in a Federal civil rights action brought against him, William Jefferson Clinton corruptly allowed his attorney to make false and misleading statements to a Federal Judge characterizing an affidavit, in order to prevent questioning deemed relevant by the Judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

(6) On or about January 18 and January 20-21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding, in order to corruptly influence the testimony of that witness.

(7) On or about January 21, 23 and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal grand jury proceeding in order to corruptly influence the testimony of those witnesses. The false and

> misleading statements made by William Jefferson Clinton were repeated by the witnesses to the grand jury, causing the grand jury to receive false and misleading information.
>
> In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States. Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor ,trust, or profit under the United States.

Article III passed the Judiciary Committee by a vote of 21 to 16 on December 11, 1998. I voted in support of its passage.

Article II, Section 1, clause 8 of the U.S. Constitution states that before a President begins his term, he shall take an oath. William Jefferson Clinton took the following oath: "I do solemnly swear that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States." Furthermore, Article II, Section 3 of the United States Constitution states in part that the President shall "take Care that the Laws be faithfully executed." President Clinton abrogated these duties by engaging in a course of conduct that obstructed and impeded the administration of justice. In so doing, he exhibited a complete disregard and lack of respect for the solemnity of the judicial process and the rule of law.

The following explanations for the individual paragraphs of Article III clearly justify the conclusion that President Clinton, using the powers of his high office, engaged personally and through his subordinates and agents, in a course of conduct or plan designed to delay, impede, cover up, and conceal the existence of evidence and testimony related to the duly instituted

federal civil rights lawsuit of *Jones v. Clinton* and the duly instituted investigation of Independent Counsel Kenneth Starr.

Although the actions of the President do not have to rise to the level of violating the federal statute regarding obstruction of justice in order to justify impeachment, some if not all of his actions clearly do. The general obstruction of justice statute is 18 U.S.C. § 1503. It provides in pertinent part: "whoever . . . corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished . . . ."[131] In short, § 1503 applies to activities which obstruct, or are intended to obstruct, the due administration of justice in both civil and criminal proceedings. This section has been interpreted to apply only to pending judicial proceedings.[132] The *Jones v. Clinton* civil rights lawsuit was pending at the time of all alleged wrongdoing under this Article.

a. On Or About December 17, 1997, The President Encouraged A Witness In A Federal Civil Rights Action Brought Against Him To Execute A Sworn Affidavit In That Proceeding That He Knew To Be Perjurious, False And Misleading.

While the President has denied asking or encouraging Ms. Lewinsky to lie by filing a false affidavit denying their relationship, he concedes in his response to Question 18 of the Committee's Requests for Admission that he told her that ". . . other witnesses had executed affidavits, and there was a chance they would not have to testify."

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[131] 18 U.S.C. § 1503.

[132] *See, e.g., United States v. Neal*, 951 F.2d 630, 632 (5th Cir. 1992).

Ms. Lewinsky was more emphatic on the subject in her grand jury testimony. When she asked the President what she should do if called to testify, he said, "'Well, maybe you can sign an affidavit." . . . The point of it would be to deter or to prevent me from being deposed and so that could range anywhere between . . . just somehow mentioning . . . innocuous things or going as far as maybe having to deny any kind of relationship.'"[133] She further stated that she was "100% sure that the President suggested that she might want to sign an affidavit to avoid testifying."[134]

Ms. Lewinsky claims that the President never explicitly told her to lie. The President and Ms. Lewinsky did have a scheme to mislead and deceive court through the use of cover stories and the proffer of a false affidavit.[135]

Moreover, the attorneys for Paula Jones were seeking evidence of sexual relationships the President may have had with other state or federal employees. Such information is often deemed relevant in sexual harassment lawsuits to help prove the underlying claim of the plaintiff, and Judge Susan Weber Wright ruled that Paula Jones was entitled to this information for the purposes of discovery. Consequently, when the President encouraged Monica Lewinsky to file an affidavit, he knew that it would have to be false for Ms. Lewinsky to avoid testifying. If she filed a truthful affidavit, one acknowledging a sexual relationship with the President, she would have been called as a deposition witness and her subsequent truthful testimony would have been damaging to the President both politically and legally.

b. On Or About December 17, 1997, The President Corruptly

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[133] H. Doc. 105-311, at 843-44.

[134] *Id.* at 1558-59.

[135] OIC REFERRAL at 174.

Encouraged A Witness In A Federal Civil Rights Action Brought Against Him to Give Perjurious, False and Misleading Testimony If And When Called To Testify Personally in That Proceeding.

Ms. Lewinsky's statements that no one told her to lie are not dispositive as to whether the President is guilty of obstruction of justice. One need not directly command another to lie in order to be guilty of obstruction: "One who proposes to another that the other lie in a judicial proceeding is guilty of obstructing justice. The statute prohibits elliptical suggestions as much as it does direct commands."[136] Indeed, the facts cannot be taken in a vacuum, they must be examined in their proper context. While Ms. Lewinsky and the President both have testified "I never asked her to lie" and "he never asked me to lie," the circumstantial evidence is overwhelming. The statement was not necessary because they concocted the cover story and both understood the willful intent to conceal the relationship in order to impede justice in *Jones v. Clinton.*

c. On Or About December 28, 1997, The President Corruptly Engaged In, Encouraged, Or supported A Scheme To Conceal Evidence That Had Been Subpoenaed In A Federal Civil Rights Action Brought Against Him.

See the discussion regarding the evidence and findings under B(1)(d), *supra*.

d. Beginning On Or About December 7, 1997, And Continuing Through And Including January 14, 1998, the President Intensified And Succeeded In An Effort To Secure Job Assistance To A Witness In A

[136] *United States v. Tranakos,* 911 F.2d 1422, 1432 (10th Cir. 1990)(citations omitted).

Federal Civil Rights Action Brought Against Him In Order To Corruptly Prevent The Truthful Testimony Of That Witness In That Proceeding At A Time When The Truthful Testimony Of That Witness Would Have Been Harmful To Him.

On December 5, 1997, Paula Jones' attorneys notified the President's attorneys of their witness list.[137] The President testified that he was notified the following day.[138]

After having been transferred from the White House to the Pentagon Ms. Lewinsky made repeated demands of the President for a job that would return her to the White House. She sent a letter to the President on July 3, 1997, which "obliquely threatened to disclose their relationship. If she was not going to return to work at the White House, she wrote, then she would 'need to explain to my parents exactly why that wasn't happening.'"[139]

After being rebuffed by the President on December 5, 1997, Ms. Lewinsky drafted a letter to the President expressing her remorse over what appeared to be the end of their affair.[140] The following day she went to the White House to deliver the letter to the President, however she was told she would have to wait approximately forty minutes because the President had a visitor, who she learned was Eleanor Mondale.[141] Upon hearing such news Ms. Lewinsky was "livid."[142]

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[137] OIC REFERRAL at 88.

[138] *Id.*

[139] *Id* at 66.

[140] *Id.* at 89.

[141] *Id.*

[142] *Id.* at 90.

When the President learned that she was aware who he was meeting with, the President became irate and indicated that someone's job was in jeopardy.[143] Such facts are important given that the President knew that Ms. Lewinsky was on the witness list for a case in which he was the defendant; he knew that she could be a potential bombshell to his defense strategy in *Jones v. Clinton*.

The President then invited her over to the White House that afternoon in order to rectify the situation.[144] During the meeting Ms. Lewinsky informed the President that Vernon Jordan had "done nothing to help her find a job."[145] In response the President, now well motivated to ensure that Ms. Lewinsky would not become a hostile witness to the defense in *Jones v. Clinton,* said he would "talk to him. I'll get on it."[146]

On December 11, 1997, Judge Susan Weber Wright ordered that Paula Jones was entitled to information about any state or federal employee with whom he had sexual relations, or proposed or sought to have sexual relations. Keeping Ms. Lewinsky on the team was now of critical importance.

On that same day, December 11, 1997, Vernon Jordan met with Ms. Lewinsky and provided her with the names of three individuals she was to contact for a job.[147] Later that day

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[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] *Id.* at 91.

[147] *Id.* at 93.

Vernon Jordan personally called three executives in order to find her a job.[148] Approximately one week later Ms. Lewinsky had two job interviews in New York City.[149]

The evidence shows that on January 7, 1998, Ms. Lewinsky signed the false affidavit. She showed the affidavit on that day to Vernon Jordan, who in turn reported to the President that it had been signed. The following day Vernon Jordan called MacAndrews and Forbes' CEO, Ron Perelman, to "make things happen, if they could happen," because Ms. Lewinsky's interview went poorly. Mr. Jordan called Ms. Lewinsky and told her not to worry. That evening Ms. Lewinsky was called by MacAndrews and Forbes and told that she would be given a second interview the next morning. The next morning, Ms. Lewinsky received her reward for signing the false affidavit. After a series of interviews with MacAndrews and Forbes personnel, she was informally offered a job. When Ms. Lewinsky called Mr. Jordan to tell him, he passed the good news along to Betty Currie. Tell the President, "mission accomplished." Later, Mr. Jordan called the President personally and told him the news.

Mr. Perelman testified that Mr. Jordan had never called him before about a job recommendation. Jordan, on the other hand, said that he called Mr. Perelman for hiring: the former mayor of New York City; a very talented attorney from the law firm Akin Gump; a Harvard Business School graduate; and Monica Lewinsky. How does Ms. Lewinsky fit into the caliber of persons who would merit Mr. Jordan's full attention and direct recommendation to a CEO of a Fortune 500 company?

The President and Ms. Lewinsky both testified that she was not promised a job in

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[148] *Id.*

[149] *Id.* at 95.

exchange for her silence. However, upon examining the compelling evidence in context, reasonable people would conclude that the President provided such assistance to Ms. Lewinsky because she was a witness in the civil suit in which he was the defendant and her truthful testimony would be harmful to the President. The quid pro quo of this arrangement was the false affidavit in exchange for Ms. Lewinsky's job in New York.

e. On January 17, 1998, At This Deposition In a Federal Civil Rights Action Brought Against Him, the President Corruptly Allowed His Attorney To Make False And Misleading Statements To A Federal Judge Characterizing An Affidavit, In Order To Present Questioning Deemed Relevant By the Judge. Such False And Misleading Statements Were Subsequently Acknowledged By His Attorney In A Communication To That Judge.

On January 15, 1998, Robert Bennett, attorney for President Clinton in the case of *Jones v. Clinton*, obtained a copy of the affidavit Monica Lewinsky filed in an attempt to avoid having to testify in the case of *Jones v. Clinton*.[150] In her affidavit, Ms. Lewinsky asserted that she had never had a sexual relationship with President Clinton. At the President's deposition on January 17, 1998, an attorney for Paula Jones began to ask the President questions about his relationship with Ms. Lewinsky. Mr. Bennett objected to the "innuendo" of the question and he pointed out that she had signed an affidavit denying a sexual relationship with the President. Mr. Bennett asserted that this indicated "there is not sex of any kind in any manner, shape or form," and after a warning from Judge Wright he stated that, "I am not coaching the witness. In preparation of the

[150] H. Doc. 105-316, at 420-21.

witness for this deposition the witness is fully aware of Ms. Jane Doe 6's affidavit, so I have not told him a single thing he doesn't know." Mr. Bennett clearly used the affidavit in an attempt to stop the questioning of the President about Ms. Lewinsky. The President did not say anything to correct Mr. Bennett, even though he knew the affidavit was false. Judge Wright overruled Mr. Bennett's objection and allowed the questioning to proceed. Later in the deposition, Mr. Bennett read the President the portion of Ms. Lewinsky's affidavit in which she denied having a "sexual relationship" with the President and asked the President if Ms. Lewinsky's statement was true and accurate. The President responded: "That is absolutely true."[151] The grand jury testimony of Ms. Lewinsky, given under oath and following a grant of transactional immunity, confirmed that the contents of her affidavit were not true:

Q: "Paragraph 8 . . . [of the affidavit] says, "I have never had a sexual relationship with the President.' Is that true?

A: No."[152]

When President Clinton was asked during his grand jury testimony how he could have lawfully sat silent at his deposition while his attorney made a false statement to a United States District Court Judge, the President first said that he was not paying "a great deal of attention" to Mr. Bennett when he said this. The President also stated that "I didn't pay any attention to this colloquy that went on." The videotaped deposition shows the President looking in Mr. Bennett's direction while Mr. Bennett was making the statement about no sex of any kind. The President

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[151] Deposition of President Clinton in the case of *Jones v. Clinton*, January 17, 1998, p.204.

[152] H. Doc. 105-311, at 924.

then argued that when Mr. Bennett made the assertion that there "is no sex of any kind. . . .," Mr. Bennett was speaking only in the present tense. The President stated, " It depends on what the meaning of the word "is" is." and that "if it means there is none, that was a completely true statement."[153] President Clinton's suggestion that he might have engaged in such a parsing of the words at his deposition is at odds with his assertion that the whole argument just passed him by.

f. On Or About January 18 and January 20-21, 1998, The President Related A False And Misleading Account Of Events Relevant To A Federal Civil Rights Action Brought Against Him To A Potential Witness In That Proceeding, In Order To Corruptly Influence The testimony Of That Witness.

The record reflects that President Clinton attempted to influence the testimony of Betty Currie, his personal secretary by coaching her to recite inaccurate answers to possible questions that might be asked of her if called to testify in the *Jones v. Clinton.* The President did this shortly after he was deposed in the case. In his deposition, he invokes Betty Currie's name numerous times. Even though Betty Currie's name was not on the witness list, it is very logical for the President to assume that the plaintiff's lawyers in the *Jones v. Clinton* would call her as a witness. That is why the President called her about two hours after the completion of his deposition and asked her to come into the office the next day, which was a Sunday.[154] Why would the President be trying to get information from Ms. Currie about false statements or refresh his recollection concerning falsehoods. The evidence supports the conclusion that the President

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[153] *Id.* at 476-77.

[154] Request for Admission No. 47.

was trying to influence the testimony of a potential witness so that she would repeat his rendition of the facts which were meant to deceive the court.

g. On Or About January 21, 23, And 26, 1998, The President Made False And Misleading Statements To Potential Witnesses In A Federal Grand Jury Proceeding In Order To Corruptly Influence The Testimony Of Those Witnesses. The False and Misleading Statement Made By The President Were Repeated By The Witnesses To the Grand Jury, Causing The Grand Jury To Receive False And Misleading Information.

The record reflects that on the dates in question President Clinton met with a total of five aides who would later be called to testify before the grand jury. The meeting took place shortly after the President's deposition in the *Jones v. Clinton* case and following a *Washington Post* story, published on January 21, 1998, which detailed the relationship between the President and Ms. Lewinsky. During the meetings the President made false and misleading statements to his aides which he knew would be repeated once they were called to testify.

The President submitted the same response to each of seven questions (Nos. 62-68) relating to this topic as set forth in the Committee's Requests for Admission. The President answered by stating that "I did not want my family, friends, or colleagues to know the full nature of my relationship with Ms. Lewinsky. In the days following the January 21, 1998, *Washington Post* article, I misled people about this relationship. . . ."[155]

According to aides who met with the President on the days in question, he insisted

[155] Request for Admissions Nos. 62-68.

unequivocally that he had not indulged in a sexual relationship with Ms. Lewinsky or otherwise done anything inappropriate. On January 21, 1998, in a conversation with Sydney Blumenthal, Assistant to the President, the President said that he rebuffed Ms. Lewinsky after she "'came at me and made a sexual demand on me.'" The President also told Mr. Blumenthal, "'I haven't done anything wrong.'"[156] Also on January 21, 1998, the President met with Erskine Bowles, his Chief of Staff, and two of Mr. Bowles' Deputies, Sylvia Matthews and John Podesta. The President began the meeting by telling Mr. Bowles that the *Washington Post* story was not true.[157] Further, the President stated that he had not had a sexual relationship with her, and had not asked anyone to lie.[158]

Two days later, on January 23, 1998, as he was preparing for his State of the Union address, the President engaged Mr. Podesta in another conversation in which he "was extremely explicit in saying he never had sex with her." When the OIC attorney asked for greater specificity, Mr. Podesta stated that the President said he had not had oral sex with Ms. Lewinsky, and in fact was "denying any sex in any way, shape or form . . . ."[159] The President also explained that Ms. Lewinsky's frequent visits to the White House were nothing more than efforts to visit Betty Currie. Ms. Currie was either with the President and Ms. Lewinsky during these "visits,' or she was seated at her desk outside the Oval Office with the door open.[160]

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[156] Grand Jury Testimony of Deposition of Sydney Blumenthal, June 4, 1998, p.49.

[157] Grand Jury Testimony of John Podesta, June 16, 1998, p. 85.

[158] *Id.*

[159] *Id.* at 91-3.

[160] H. Doc. 105-316, at 3310.

Finally, on January 26, 1998, the President met with Harold Ickes, another Deputy Chief of Staff to Mr. Bowles. At the time, the President said that he had not had a sexual relationship with Ms. Lewinsky, had not obstructed justice in the matter, and had not instructed anyone to lie or obstruct justice.[161]

By his own admission more than seven months later, the President said that he had told a number of his aides that he did not "have an affair with [Ms. Lewinsky] or . . . have sex with her." He also admitted that he knew that these aides might be called before the grand jury as witnesses.[162]

(4) Article 4 -- Perjury Before the House

> Using the powers and influence of the office of President of the United States, William Jefferson Clinton, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has engaged in conduct that resulted in misuse and abuse of his high office, impaired the due and proper administration of justice and the conduct of lawful inquiries and contravened the authority of the legislative branch and the truth-seeking purpose of a coordinate investigative proceeding, in that, as President, William Jefferson Clinton refused and failed to respond to certain written requests for admission and willfully made perjurious, false and misleading sworn statements in response to certain written requests for admission propounded to him as part of the impeachment inquiry authorized by the House of Representatives of the Congress of the United States. William Jefferson Clinton, in refusing and failing to respond and in making perjurious, false and misleading statements, assumed to himself functions and judgments necessary

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[161] *Id.* at 1487, 1539.

[162] H. Doc. 105-311, at 647.

> to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives and exhibited contempt for the inquiry.
>
> In doing this, William Jefferson Clinton has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive of the rule of law and justice, to the manifest injury of the people of the United States.
>
> Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, and removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

The House Judiciary Committee voted in favor of reporting Article IV to the House of Representatives by a vote of 21 to 16 on December 12, 1998. I voted in favor of its passage.

> He who permits himself to tell a lie once, finds it much easier to do it a second and third time, till at length it becomes habitual; he tells lies without attending to it, and truths without the world's believing him. This falsehood of the tongue leads to that of the heart, and in time depraves all its good dispositions.[163]

Pursuant to House Resolution 581, on November 5, 1998, the Judiciary Committee sent a letter to the President seeking his cooperation in the impeachment investigation. The letter asked the President to answer 81 questions, under oath, utilizing an enclosed affidavit.

The President provided false and misleading statements under oath in response to the written requests for admissions. Specifically, the President did not answer completely and honestly request for admissions numbers: 19, 20, 24, 26, 27, 34, 42, 43, 52, and 53. Failure to answer the questions completely and honestly represents a violation of his duty to cooperate with the congressional committee exercising the impeachment power.

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[163] Letter from Thomas Jefferson to Peter Carr (August 19, 1785).

I will briefly discuss the pertinent requests for admissions one at a time.

Question 19: Do you admit or deny that on or about December 17, 1997, you suggested to Monica Lewinsky that she could say to anyone inquiring about her relationship with you that her visits to the Oval Office were for the purpose of visiting with Betty Currie or to deliver papers to you?

Answer Provided: The President responded that such cover stories were only in a non-legal context: [I] "may have talked about what to do in a non-legal context at some point in the past, but I have no specific memory of that conversation." The President maintained that any such conversation was not in the context of the *Jones v. Clinton* case.

Facts as Provided in Referral: Under oath Ms. Lewinsky testified that she had a conversation with the President about her affidavit, and that at some point the President suggested the cover story: "[Y]ou can always say you were coming to see Betty or that you were bringing me letters."

Question 20: Do you admit or deny that you gave false and misleading testimony under oath when you stated during your deposition in the case of *Jones v. Clinton* on January 17, 1998, that you did not know if Monica Lewinsky had been subpoenaed to testify in that case?

Answer: The President contradicted his deposition testimony. In the answer to request No. 20 the President stated that he did know that Ms. Lewinsky had been subpoenaed.

Facts As Provided In Referral: In the deposition he stated that he did not know about the subpoena, and did not speak with anyone besides his attorneys regarding the subpoena. This question and answer demonstrates a direct contradiction. Thus, it demonstrates an intent to mislead either at the time of the deposition, or in answering the requests for admissions.

Question 24: Do you admit or deny that on or about December 28, 1997, you had a discussion with Monica Lewinsky at the White House regarding gifts you had given to Ms. Lewinsky that were subpoenaed in the case of *Jones v. Clinton?*

Answer Provided: The President stated that when Ms. Lewinsky inquired about the subpoena covering the gifts, he told her if subpoenaed she would have to turn over the gifts.

Facts As Provided In Referral: Ms. Lewinsky testified that she expressed her concern about the Jones case, and suggested that the gifts be put away. According to Ms. Lewinsky, the President responded that he would think about it or consider it. Thus, in the requests for admission the President states that he told her she would have to follow the law. The testimony of Ms. Lewinsky contradicts such assertions.

Question 26: Do you admit or deny that on or about December 28, 1997, you discussed with Betty Currie gifts previously given by you to Monica Lewinsky?

Answer: The President responded that he did not recall any conversation with Ms. Currie regarding the gifts. Further, he answered that he did not instruct Ms. Currie to retrieve the gifts.

Facts As Provided In Referral: According to Ms. Lewinsky's testimony, Betty Currie called her on the telephone and stated that she understood Ms. Lewinsky had something to give her. Phone record indicate that Ms. Currie initiated the phone call. Thus, the evidence shows that the President was attempting to avert the whole truth and nothing but the truth as to this question.

Question 27: Do you admit or deny that on or about December 28, 1998, you requested , instructed, suggested to or otherwise discussed with Betty Currie that she take possession of gifts previously given to Monica Lewinsky by you?

Answer: The President responded that he could not recall any such conversation. He

further stated that he did not instruct Ms. Currie to take possession of the gifts. The evidence as to these matters is discussed in regard to Question 26, *supra*.

Question 34: Do you admit or deny that you had knowledge that any facts or assertions contained in the affidavit executed by Monica Lewinsky on January 7, 1998, in the case *Jones v. Clinton* were not true?

Answer: As to paragraph 8 pertaining to sexual relations, the President maintained that his deposition answer attesting to Ms. Lewinsky's affidavit was true. In paragraph 8 of Ms. Lewinsky's affidavit she stated that she had not engaged in sexual relations. In the deposition the President affirmed the truthfulness of Ms. Lewinsky's affidavit. In the request for admission answer the President persists in stating that he was truthful because he understood her interpretation of sexual relations to only include sexual intercourse. Such a response is yet another attempt to evade the truth and mislead the Committee.

Question 42: Do you admit or deny that when asked on January 17, 1998, in your deposition in the case of *Jones v. Clinton* if you had ever given gifts to Monica Lewinsky, you stated that you did not recall, even though you actually had knowledge of giving her gifts in addition to gifts from the "Black Dog?"

Answer: The President stated that his response at the deposition was "I don't recall. Do you know what they were?" The President maintains that by responding in such a manner he did not mean that he could not remember giving her gifts, only that he could not remember what they were.

Facts As Provided In Referral: The evidence shows that only three weeks earlier the President and Ms. Lewinsky had a discussion about the hat pin which was under subpoena. The

evidence further shows that both parties expressed concern about that particular gift under subpoena. The President's lawyer, Mr. Ruff, vouched that the President has an impeccable memory. Given that the discussion of gifts was only three weeks earlier, it is highly unlikely that the President could not remember the hat pin in particular. The President's answers were therefore evasive and less than truthful.

Question 43: Do you admit or deny that you gave false and misleading testimony under oath in your deposition in the case of *Jones v. Clinton* when you responded "once or twice" to the question "has Monica Lewinsky ever given you any gifts?"

Answer: The President responded in his deposition by stating that he gives and receives numerous gifts, and that he thought she had given him one or two. In fact, Ms. Lewinsky gave the President approximately 38 gifts. In the request for admissions the President stated that his deposition response was not false and misleading because given the large number of gifts he receives he could not recall a precise amount.

Facts As Provided In Referral: In fact, the President was not even close to the number of gifts she gave him. Once again, taken within the context of the overwhelming evidence, this is another example of the President's feigned memory problems which represents an intent to mislead the Committee and withhold the truth.

Question 52: Do you admit or deny that on January 18, 1998, at or about 5:00 p.m. you had a meeting with Betty Currie at which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. "You were always there when she was there, right? We were never really alone."

b. "You could see and hear everything."

c. “Monica came on to me, and I never touched her right?”

d. “She wanted to have sex with me and I couldn’t do that.”

Answer: In response to the requests for admissions, the President stated that he asked Ms. Currie certain questions, but could not remember exactly what was said.

Facts As Provided In Referral: In fact, Ms. Currie testified that she understood his comments to be statements rather than questions. Further, the record indicates that the President made similar statements at a meeting held around 5 p.m. that day.

Question 53: Do you admit or deny that you had a conversation with Betty Currie within several days of January 18, 1998, in which you made statements similar to any of the following regarding your relationship with Monica Lewinsky?

a. “You were always there when she was there, right?” “ We were never really alone.”

b. “You could see and hear everything.”

c. “Monica came on to me, and I never touched her right?”

d. “She wanted to have sex with me and I couldn’t do that.”

Answer: In the answer to the requests for admissions the President stated that in his grand jury testimony he stated that he did not know that he had another conversation with Ms. Currie in which he made statements similar to those quoted.

Facts As Provided In Referral: The record indicates that the President made similar statements to Ms. Currie on another occasion close in time to January 18, 1998.

VI. CONCLUSIONS

Those in defense of the President argue that even if all the evidence is true, the activities do not amount to impeachable offenses. They insist that the President’s actions involved private

conduct, and the impeachment remedy for corruption does not apply to private conduct. Such an argument is both convenient and misguided. In the last twenty years Congress has indeed impeached individuals for private conduct.

There have been three impeachments involving judges since the impeachment of President Nixon. Judge Harry Claiborne was impeached for making a false and fraudulent income tax return. Judge Walter Nixon was impeached for making false and misleading statements before a federal grand jury. Judge Alcee Hastings was impeached for perjury in a criminal trial. The alleged perjury committed by Judge Hastings was to conceal his involvement in a bribery conspiracy. Thus, perjury has played a central role in each of the three judicial impeachments.

During Judge Claiborne's impeachment proceedings, Representative Hamilton Fish stated that: "[i]mpeachable conduct does not have to occur in the course of the performance of an officer's official duties. Evidence of misconduct, misbehavior, high crimes, and misdemeanors can be justified upon one's private dealings as well as one's exercise of public office. That, of course, is the situation in this case."[164]

In the present case, even if the President's actions were "private," the evidence leads a reasonable person to the conclusion that the President lied under oath, obstructed justice and tampered with witnesses.

The President argues that he did not commit perjury because the answers he provided under oath were literally correct. Such a defense relies on a misguided parsing and hair-splitting of words. The law is clear. Perjury charges can be imposed upon a witness who feigns

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[164] 132 Cong. Rec. H4713 (daily ed. July 22, 1986).

forgetfulness.[165] When a witness feigns forgetfulness, the prosecutor need only prove that the witness had information or knowledge about the events in question.[166] Such circumstances require an examination of all the evidence in the case, or the circumstantial evidence which tends to show that the witness in fact had information about the events in question.[167] If the circumstantial evidence shows beyond a reasonable doubt that the witness had information, a conviction may lie.[168]

Before the grand jury, and throughout this investigation, the President has repeatedly said, "I don't remember," and "I don't recall." When Mr. Ruff, the Chief White House Counsel, testified before the Judiciary Committee in the President's defense he stated that the President has an excellent memory. Interestingly, the President had a motive to lie from the moment Judge Wright ordered that an inquiry into other federal and state employees with whom the President had sexual relations was permissible and relevant to the *Jones v. Clinton* case. The overwhelming circumstantial evidence in this case demonstrates that the President feigned forgetfulness on a consistent basis.

For example, the evidence shows that the President met with Ms. Lewinsky on December 28, 1997, and had a discussion about certain gifts the two had exchanged, specifically, the hat pin which was listed in Ms. Lewinsky's subpoena. The evidence also shows that the President's

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[165] *See United States v. Dean*, 55 F.3d 640 (D.C. Cir. 1995), *cert. denied,* 516 U.S. 184 (1996); *see also United States v. Dunnigan*, 507 U.S. 87 (1993).

[166] *See United States v. Dean*, 55 F.3d 640 (D.C. Cir. 1995), *cert. denied,* 516 U.S. 184 (1996).

[167] *Id.*

[168] *Id.*

secretary went to retrieve numerous gifts from Ms. Lewinsky that day, the Sunday after Christmas weekend. In fact, the President was concerned that a reporter questioned Ms. Lewinsky about a hat pin that was a gift from the President. Yet, three weeks later in the *Jones v. Clinton* deposition the President could not recall specific gifts, and later testified that he was not concerned about them on that day. Again, examining the cumulative evidence in this case, it is very clear the President had knowledge about this matter, but feigned forgetfulness to the court.

On at least 23 questions the President professed a lack of memory. This from a man who is renowned for his remarkable memory and ability to recall details, as testified to by White House Counsel, Mr. Ruff, before the Judiciary Committee.

In a letter to House leaders, numerous legal scholars stated, "[i]t goes without saying that lying under oath is a very serious offense."[169] They also recognize that perjury is an attack on our system of laws, "[p]erjury and obstructing justice can without doubt be impeachable offenses . . . Moreover, covering up a crime furthers or aids the underlying crime."[170]

Another fact which tends to show that perjury is indeed a high crime worthy of impeachment is the fact that perjury and bribery are accorded the same penalty under the Federal Sentencing Guidelines. The Guidelines are a product of the Federal Sentencing Commission which determines the penalty for criminal offenses by examining the predicate offense, or the crime for which the person was charged, and then lists mitigating and aggravating factors in order to reach a recommended sentence for courts to consider when imposing a punishment on a

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[169] Letter from professors of law to Speaker Gingrich and House leaders 3 (Nov. 6, 1998)(on file with Congressman Buyer).

[170] *Id.*

convicted criminal. According to the Commission, bribery and perjury warrant the same penalty. It follows that the two crimes are comparable in gravity according to the Commission.

VII. Censure

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*,
> That it is the sense of Congress that-
>
> (1) on January 20, 1993, William Jefferson Clinton took the oath prescribed by the Constitution of the United States faithfully to execute the office of President; implicit in that oath is the obligation that the President set an example of high moral standards and conduct himself in a manner that fosters respect for the truth; and William Jefferson Clinton, has egregiously failed in his obligation, and through his actions violated the trust of the American people, lessened their esteem for the office of President, and dishonored the office which they have entrusted to him;
>
> (2)(A) William Jefferson Clinton made false statements concerning his reprehensible conduct with a subordinate;
>
> (B) William Jefferson Clinton wrongly took steps to delay discovery of the truth; and
>
> (C) inasmuch as no person is above the law, William Jefferson Clinton remains subject to criminal and civil penalties; and
>
> (3) William Jefferson Clinton, President of the United States, by his conduct has brought upon himself, and fully deserves, the censure and condemnation of the American people and the Congress; and by his signature on this Joint Resolution, acknowledges this censure and condemnation**.**

On December 12, 1998, the Judiciary Committee considered a censure resolution. After lengthy debate, the Committee declined to submit such a resolution by a vote of 14 in favor to 22 in opposition. I opposed the censure resolution.

Congress lacks the power to punish the President aside from formal impeachment

procedures. The impeachment clauses of the Constitution specifically provide that the Chief Executive is subject to impeachment by the House and trial by the Senate.[171]

The Framers' decision to confine legislative sanctioning of the executive officials to removal upon impeachment was carefully considered. By forcing the House and Senate to act as a tribunal and trial jury, rather than merely as a legislative body, they infused the process with notions of due process to prevent impeachment from becoming a common tool of party politics. The requirement of removal upon conviction accentuates the magnitude of the procedure, encouraging serious deliberation among members of Congress. Most importantly, by refusing to include any consequences less serious than removal as outcomes of the impeachment process, the Framers made impeachment into such an awesome weapon that Congress could not use it to harass executive officials or otherwise interfere with operations of coordinate branches.

The Framers of the Constitution purposely avoided granting the legislature the power to impose nonjudicial punishment, as "such bills are condemned in the Constitution because they represent legislative encroachment on the powers of the judiciary."[172] A bill of attainder "assumes . . . judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial.'" [173] The impeachment procedures explicitly provided by the Constitution

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[171] "The House of Representatives . . . shall have the sole Power of Impeachment." U.S. CONST. art. I, § 2. "The Senate shall have the sole Power to try all Impeachments." U.S. CONST. art. I, § 3. "The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." U.S. CONST. Art II, § 4.

[172] *Linnas v. INS,* 790 F.2d 1024, 1028, *cert. denied,* 107 S.Ct. 600, 479 U.S. 995 (1986).

[173] *Id.* at 1028, quoting *Cummings v. Missouri*, 71 U.S. (4 Wall.) 271, 323, 18 L.Ed. 356 (1866).

provide such fairness. Censure is an inappropriate method to bypass the impeachment procedures prescribed in the Constitution.

Some members have proposed censure as a sanction from analogy to the legislative procedures by which members of each House censure its own members. The analogy fails because the Constitution expressly provides plenary authority to each House of Congress to fashion penalties for member of the legislative branch short of expulsion, but provides no such authority to discipline officers of other branches in the same manner. It is pursuant to this explicit authority that each House can require one of its members to go to the well of the House and receive the judgment of their peers.

For the President or any other civil officer, this kind of shaming punishment by the legislature is precluded, since the impeachment provisions permit Congress only to remove an officer of another branch and disqualify him from office. Not only would such a punishment undermine the separation of powers, but it would violate the Constitution's prohibition on bills of attainder.

The law is clear on legislative punishments without the benefit of a trial. Such punishments violate Article I, section 9 of the Constitution which prohibits bills of attainder. A bill of attainder is defined as a legislative act which inflicts punishment without a judicial trial.[174] [175] In basic terms, that means that other than through impeachment procedures, Congress may not

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[174] Historically, the bill of attainder was used to punish a certain person or a group by death, prison, banishment, punitive confiscation of property, or by barring participation in specific employment or vocation. *Artway v. Attorney General of the State of New Jersey*, 81 F.3d 1235 (3rd Cir. 1996).

[175] *Nixon v. Administrator of General Services*, 433 U.S. 425, 468 (1977); *Linnas v. INS*, 790 F.2d 1024, *cert. denied*, 107 S.Ct. 600, 479 U.S. 995 (1986); *WMX Tech., Inc. v. Gasconade*

punish the President for past acts. These constitutional prohibitions on bills of attainder prohibit state legislatures, as well as the federal legislature from imposing an expedited or summary punishment for past conduct.[176]

Even a statement of reproval intended to punish the President by discussing his behavior could potentially violate the rule against bills of attainder.[177] Censure measures which include language of proposed articles of impeachment could therefore implicate the bills of attainder prohibition.

In order for a legislative measure to survive the bill of attainder prohibition, it must pass a three prong test. The test requires that the actual purpose, objective purpose, and effect are non-punitive.[178] Courts are directed to examine the legislative intent of the measure to see if the intent was to punish.[179] If the objective purpose was solely remedial, the measure may not qualify as punitive.[180] Similarly, if the intent of the measure is to deter future acts of the same nature, it is

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County, Mo., 105 F.3d 1195, 1201 (8th Cir. 1997); *Charles v. Rice*, 28 F.3d 1312, 1318 (1st Cir. 1994); *Antonio v. Wards Cove Packing Co., Inc.*, 10 F.3d 1485, *cert. denied*, 115 S.Ct. 57, 513 U.S. 809 (9th Cir. 1993); *U.S. v. Patzer*, 15 F.3d 934 (10th Cir. 1993).

[176] *Landgraf v. USI Film Products*, 114 S.Ct. 1483, 1497, 511 U.S. 244 (1994); *Fraternal Order of Police Hobart Lodge No. 121 v. City of Hobart*, 864 F.2d 5451 (7th Cir. 1988); *Artway v. Attorney General of the State of New Jersey*, 81 F.3d 1235, *reh'g denied*, 83 F.3d 594 (3rd Cir. 1996).

[177] *WMX Tech., Inc. v. Gasconade County, Mo.*, 105 F.3d 1195, 1201 (8th Cir. 1997); *Selective Service System v. Minnesota Public Interest Research Group*, 104 S.Ct. 3348, 3352, 468 U.S. 841 (1984).

[178] *Artway v. Attorney General of the State of New Jersey*, 81 F.3d 1235, 1263 (3rd Cir. 1996).

[179] *Id.* at 1263.

[180] *Id.*

likely not punitive.[181] Stated simply, a bill of attainder prohibited by the Constitution contains three components: specification of affected persons, some form of punishment, and lack of a judicial trial.[182]

An integral part of the censure debate was whether the purpose of censure is to punish the President. Would censure serve a valid legislative purpose? What is the intent behind a censure resolution? Is censure merely impeachment under another name? Or is it a novel form of a plea bargain wherein a "deal" is made to mitigate the punishment? In answers to my questions regarding the intent of the authors, Representative Boucher of Virginia stated: "It is not our purpose to have findings of guilt. It is not our intent to punish the President." However, a close examination of the wording in the censure resolution appears that the implicit purpose would be to shame the President, to voice disdain for his actions which undermine the integrity of the office of the president, to reprove his dubious if not criminal acts, i.e., to punish.

The censure resolution uses such words and phrases as, "egregiously failed;" "violated the trust of the American people;" "lessened their esteem;" "dishonored the office;" "made false statements;" "reprehensible conduct;" "wrongly took steps to delay discovery of the truth;" and "fully deserves, the censure and condemnation." The use of these words and phrases is not remedial, on the contrary, it is to shame and condemn the President's misconduct.

Paragraph (2)(A) of the censure resolution states: "William Jefferson Clinton made false statements concerning his reprehensible conduct with a subordinate." This is in reference to the

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[181] *Id.*

[182] *Dehainaut v. Pena*, 32 F.3d 1066 (7th Cir. 1994); *Zilich v. Longo*, 34 F.3d 359 (6th Cir. 1994).

President's sexual misconduct. It is an expression of moral condemnation as a form of national retribution. Therefore, in my opinion, it is a legislative punishment neither contemplated by the express provisions nor the design of the Constitution regarding separation of powers.

Some members of Congress argue that censuring the President is a better idea than impeachment because that is "what the American people want." The American people want their elected officials to act under and in accordance with the laws of this nation. Further, the American people want their elected representatives to take a stand on matters of national importance, such as the integrity of our justice system, and for Members of Congress and the Senate to exercise judgment in matters of statecraft based on their intellect, not the emotions of the moment, and for the President to do his duty to faithfully execute and uphold the laws of this nation.

The facts and evidence in this case are overwhelming; the allegations are grave.[183] The Judiciary Committee, endowed with the *responsibility* to investigate this evidence, determined the allegations against the President do rise to the level of impeachable offenses. A minority of Members disagreed and offered a censure resolution as an alternative to impeachment.

[183] As discussed, the allegations substantiated by evidence include: perjury while a defendant in a civil rights case, perjury as a witness before a federal grand jury, subornation of perjury, witness tampering, obstruction of justice, and misleading Congress in refusing to answer the requests for admissions completely and truthfully.

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On December 12, 1998, I delivered the final closing argument for the majority on the Judiciary Committee on the Articles of Impeachment:

Committee on the Judiciary, House of Representatives

105TH CONGRESS

Impeachment Inquiry

STATEMENT OF CONGRESSMAN STEVE BUYER

DECEMBER 12, 1998

I thank the gentlewoman, Ms. Bono of California, for yielding. I am going to support the Gekas amendment. I will vote for Impeachment Article IV. The President's responses to the 81 requests for admissions from the Judiciary Committee were a continuation of a pattern of perjury and obstruction of justice.

When we bring up the issues regarding the impeachment of former Federal judges Mr. Claiborne and Mr. Nixon, what was interesting, at the time we had a Democrat Majority on the Judiciary Committee, and they brought forward Articles of Impeachments. They passed the House. We had managers who prosecuted them in trial before the Senate. What I find most interesting is that these judges were prosecuted, and one standard was used: high crimes and misdemeanors. They said one standard that applies to the President and Vice President will also apply to these Federal judges and other civil officers. Yet now, the President's defenders are arguing Judge Claiborne's position that his

private misconduct does not rise to the level of an impeachable offense.

You see, in the defense of the Judges Claiborne and Nixon, the defense lawyers in the trial in the Senate argued that the Federal judges should be treated differently, that they could not be impeached for private misbehavior, because it is extrajudicial. The Democrat Majority at the time rejected that proposition as incompatible with common sense and the orderly conduct of government. Federal judges and the President should be treated by the same standard: impeachment for high crimes and misdemeanors. Well, I agree. I think the Republicans and Democrats at the time in the 1980s on both of those cases agreed and had it right. I think the Judiciary Committee needs to follow the precedent and be consistent, and that is what we are trying to do here.

I also want to express my appreciation to Mr. Coble of North Carolina. Mr. Coble expressed some honesty about his own personal conscience, about his gut and how it was being turned over. And I don't believe anyone should make a mockery about someone describing how they personally feel going through this process, because it is not easy. So I am going to speak about my conscience.

You see, I didn't sleep very well last night. So what I did about 2 a.m. this morning is I went out and took a jog. Now some may say that may not be a smart thing to do in Washington at 2 a.m., but I took a jog down the Mall. I first went through the area of the Korean Memorial. I did that because of my father, and then I thought of Mr. Conyers, and I thought of others; I then went over to the Vietnam Memorial, and I walked slowly. I thought of my days back as a cadet at The Citadel.

There was this officer who was a Vietnam veteran, walked up to the blackboard, and his name today is Colonel Trez. He was a young major at the time, carrying the fresh memories of battle. He walked over and he wrote this statement on the blackboard and demanded that his young Citadel cadets memorize this statement. It read, ``Those who serve their country on a distant battlefield see life in a dimension that the protected may never know."

You see, I worked hard to understand what it meant. I thought I did, but it wasn't until years later that I understood the

real meaning from my military service in the Gulf War. I had a very dear friend die. I understand the painful tears, and I understand the horrors of war.

As I jogged back, I stopped at the Washington Monument. The Mall is beautiful at night. And then I thought about the World War II veterans, Mr. Hyde and others, a unique generation. They were truly crusaders. They fought for no bounty of their own. They left freedom in their footsteps. And then I thought about something I had read in military history. After D-Day they were policing up the battlefield and lying upon the battlefield was an American soldier who was dead. No one was around to hear his last words, so he wrote them on a pad. Can you imagine the frustration, knowing you are about to die and there is no one around to say your last words to? I don't know what you would write, but this soldier wrote, ``Tell them when you go home, I gave this day for their tomorrow." Of my fallen comrades, if I permit the eyes of my mind to focus, I can see them. And, if I permit the ears of my heart to listen, I can hear them. The echoes of ``do not let my sacrifice be in vain. I fell with the guidon in my hand. Pick it up and stake it in the high ground."

You see, part of my conscience is driven by my military service. I am an individual that not only is principled, but also steeped in virtues, and I use them to guide me through the chaos. Throughout this case, I think about people all across America, about America's values and the American character, and I want to put it in plain-spoken words.

I believe we are to defend the Constitution, America's heritage, and define our Nation's character. So when I think about America's character and commonsense virtues, I think about honesty. What is it? Tell the truth; be sincere; don't deceive, mislead or be devious or use trickery; don't betray a trust. Don't withhold information in relationships of trust. Don't cheat or lie to the detriment of others, nor tolerate such practice. On issues of integrity, exhibit the best in yourself. Choose the harder right over the easier wrong. Walk your talk. Show courage, commitment, and self-discipline.

On issues of promise-keeping, honor your oath and keep your word.

On issues of loyalty, stand by, support and protect your family, your friends, your community, and your country. Don't spread rumors, lies, or distortions to harm others. You don't violate the law and ethical principles to win personal gain, and you don't ask a friend to do something wrong.

On issues of respect, you be courteous and polite. You judge all people on their merits. You be tolerant and appreciative and accepting of individual differences. You don't abuse, demean, or mistrust anyone. You don't use, manipulate, exploit, or take advantage of others. You respect the right of individuals.

On the issues of acting responsibly and being accountable, think before you act; meaning, consider the possible consequences on all people from your actions. You pursue excellence, you be reliable, be accountable, exercise self control. You don't blame others for your mistakes. You set a good example for those who look up to you.

On the issue of fairness, treat all people fairly. Don't take unfair advantage of others, don't take more than your fair share. Don't be selfish, mean, cruel or insensitive to others. Live by the Golden Rule.

You see, citizens all across America play by the rules, obey the laws, pull their own weight; many do their fair share, and they do so while respecting authority.

I have been disheartened by the facts in this case. It is sad to have the occupant of the White House, an office that I respect so much, riddled with these allegations, and now I have findings of criminal misconduct and unethical behavior. We cannot expect to restore the confidence in government by leaving a perjurious President in office.

I yield back my time.

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